

SUPREME COURT OF QUEENSLAND

CITATION: *Legal Services Commissioner v Chadwick* [2009] LPT 16

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

AND

COLIN CHADWICK
(respondent)

FILE NO/S: 9698 of 2008

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline Action

DELIVERED ON: 6 August 2009

DELIVERED AT: Brisbane

HEARING DATE: 1 June; 29 July 2009

JUDGE: Atkinson J

PRACTITIONER
PANEL MEMBER Mr K Horsley

LAY PANEL
MEMBER Ms K A Keating

ORDER:

- 1. The respondent is guilty of two counts of professional misconduct;**
- 2. The respondent is publicly reprimanded pursuant to s. 456(2)(e) of the *Legal Profession Act 2007*; and**
- 3. The respondent must continue such medical treatment as his treating doctor, or another appropriately qualified medical practitioner may recommend, for a period of 5 years; and**
- 4. For a period of 5 years, the respondent authorises the Legal Services Commission to seek and obtain information (in writing or otherwise) from his treating doctor (or any future treating doctor) in a manner sufficient to inform itself as to;**
 - (a) No more frequently than monthly - the respondent's attendance at appointments, and compliance with medication and treatment as prescribed; and**
 - (b) No more frequently than yearly the respondent's health and treatment status generally;**

5. **Within 14 days the respondent is to produce and provide to the Legal Services Commission a risk management plan. The plan is to detail the implementation of measures by the respondent to ensure the satisfactory running of his practice in the event he is not able to attend to the running of his practice; and**
6. **Within 14 days the respondent is to provide to the Legal Services Commission the name of a suitably qualified person whom the respondent proposes is suitable to provide professional guidance and mentoring to the respondent in the course of the respondent's continuing legal practice; and**
7. **The respondent is to submit to a twice-yearly external audit of the practice of which the respondent is a Director, for the next 12 months; and**
- ...
9. **Should the applicant become aware of non-compliance on the part of the respondent with any part of these orders, the applicant has liberty to apply to the Tribunal for the matter to be relisted for further hearing.**
10. **The respondent pay the applicant's costs in the sum of \$2,500.00 by the end of the calendar year, 2009.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent solicitor on two occasions created without authority, letters purporting to be from his employer – where applicant submits the respondent intended to use the letters to assist a personal finance application – where letters contained false or misleading representations – where the applicant did not actually send or utilise the letters – where applicant asserts he was suffering from a medical condition at the time of the alleged misconduct – whether applicant is guilty of professional misconduct or unsatisfactory professional conduct – what is the appropriate penalty in the circumstances

Legal Profession Act 2007 (Qld), ss 419, 455, 456

Adamson v Queensland Law Society Inc [1990] 1 Qd R 498, cited

QLS v Carberry; A-G v Carberry [2000] QCA 450, cited

Legal Services Commissioner v Sorban [2009] LPT 5, cited
Legal Services Commissioner v Ramsden [2006] LPT 10,
 cited

COUNSEL: Lane S L for the applicant

SOLICITORS: Legal Services Commission for the applicant
 Gilshenan & Luton Legal Practice for the respondent

- [1] The respondent, Colin Chadwick, faced two charges under s 452 as varied under s 455 of the *Legal Profession Act 2007* (“the Act”) alleging behaviour which constitutes professional misconduct or in the alternative unsatisfactory professional conduct.
- [2] The first charge was that on or about 22 August 2006 Mr Chadwick, without authority, created a letter purporting to be from his then employer, MacDonnells Law (“MacDonnells”) and he intended to use the letter, which contained representations that were false and misleading, to assist his personal application for finance. The second charge was of similar behaviour on 29 August 2006.
- [3] The parties filed an agreed statement of facts which shows that the respondent cooperated in the determination of this matter. There had been no previous adverse findings made about him by a disciplinary body. The facts set out below came from the agreed statement of facts and from affidavit material which had been filed.
- [4] Mr Chadwick was admitted to practice on 6 December 1998 as a solicitor of the Supreme Court of Victoria. He does not hold a Queensland Practising Certificate but has practised in Queensland on an interstate practising certificate since admission. He is therefore an Australian lawyer as defined by s 5(1) of the Act.
- [5] Mr Chadwick commenced working as a law clerk in Mildura in 1983. He then worked as law clerk in Perth and Melbourne before returning to work at another legal firm in Mildura, during which he undertook a five year articles programme. He became a partner in that firm in 1999 following his admission as a solicitor in December 1998. He continued in partnership in the firm, Martin Irwin and Richards until a partnership dispute in 2006 led to his leaving Victoria and relocating to Queensland where he obtained employment and hoped to buy a house and have his family join him.
- [6] From 4 August to 8 September 2006, when he was dismissed from his employment, he was an employed solicitor at MacDonnells Law. From 18 September to 6 October 2006 he was an employed solicitor at CBD Lawyers and Corporate Advisors. He then returned to Mildura. He did not work for about a year because of ill health. He recommenced practice in Mildura in November 2007 at Chadwick Lawyers & Associates, before returning to Queensland in September 2008.
- [7] Apart from his brief period of employment in 2006, when he engaged in the conduct the subject of these charges, he has practised in Queensland on his own account. From 1 October 2008 to 30 April 2009 he was a sole practitioner at the firm McKoy Chadwick Lawyers and from 1 May 2009 to the present he has been a director of the incorporated legal practice, Winchester Young & Maddern.

- [8] The behaviour the subject of the charges occurred when he was an employed solicitor at MacDonnells Law.
- [9] On 31 July 2006, Mr Chadwick signed a contract of employment with MacDonnells, which contract included the following terms:
- (a) The employee's position was "solicitor";
 - (b) The employment was on a probationary basis for up to six months, meaning that the probationary period would or could expire as late as 31 January 2007;
 - (c) His gross salary was \$109,000 per annum;
 - (d) A salary review would occur at the expiration of the probationary period and thereafter on an annual basis; and
 - (e) His position would be reviewed after the expiration of the probationary period and would be assessed against key performance indicators. At that time Mr Chadwick might be elevated to a more senior role within the firm, for example, to that of Associate.
- [10] The contract of employment had not been changed at the time he engaged in the behaviour the subject of the charges, which occurred within one month of his employment, when he had entered into a contract to purchase a house subject to finance.
- [11] The conduct the subject of charge one occurred on or about 22 August 2006 when Mr Chadwick prepared and printed a letter addressed to a Mr Chris McDougall at the Wesptac Banking Corporation Limited entitled "Re: Confirmation of terms of employment" and signed with MacDonnells' electronic signature. The letter contained the following representations:
- (a) Mr Chadwick's probationary period would expire on or before 30 September 2006;
 - (b) Upon the completion of his probationary period his income would increase to \$170,000 gross per annum;
 - (c) He would thereafter be promoted to Senior Associate; and
 - (d) The letter had been signed by an authorised representative of MacDonnells.
- [12] The first three representations were false or misleading as they did not reflect the terms of his employment contract. Further the representation that the letter had been signed by an authorised representative of the firm was false or misleading as the letter was not written by or approved by an employee of MacDonnells who was authorised to verify particulars of employment. Mr Chadwick knew, or at least ought to have known, that the representations made in that letter were false or misleading. He created the letter without authority from his employer and he prepared the letter on the basis that it could be utilised to assist a personal application for finance.

- [13] The second charge related to a letter prepared and printed by Mr Chadwick on or about 29 August 2006 addressed “To whom it may concern” and purporting to be from MacDonnells. The letter contained the following representations:
- (a) That Mr Chadwick had no probationary period;
 - (b) That his income was \$120,000 gross per annum;
 - (c) His salary would be reviewed quarterly; and
 - (d) The letter had been authorised by MacDonnells.
- [14] The first three representations were false or misleading as they did not reflect the terms of his employment contract and the final representation was false or misleading as the letter was not written by or approved by an employee of MacDonnells who was authorised to verify particulars of employment. Mr Chadwick knew, or ought to have known, that the representations were false or misleading. He created the letter without authority from his employer, MacDonnells, and prepared the letter on the basis that it could be utilised to assist a personal application for finance.
- [15] The matters the subject of the disciplinary application were brought to the attention of the Legal Services Commissioner (“the Commissioner”) following a complaint by MacDonnells dated 31 August 2006. An investigation was conducted during which Mr Chadwick advised that he was suffering from a medical condition at the time of the conduct.
- [16] On 15 May 2009, Mr Chadwick’s legal representative provided a report by Dr Pollock to the applicant. That report was dated 8 June 2007 and was addressed to the Commissioner, but was not provided to the Commissioner for a period of some two years. No explanation was provided for that delay. Mr Chadwick subsequently provided an updated report by Dr Pollock dated 22 May 2009.
- [17] The letters from Dr Pollock reveal that Mr Chadwick became a patient of hers in March 2007 following a hospital admission.
- [18] Mr Chadwick said in his affidavit filed on 28 May 2008 that he was first diagnosed with a medical condition in 2002 and that between then and 2006 he experienced various symptoms of ill health. He deposed that he saw Dr Millard in 2004. He says that he was prescribed medication and was advised to reduce his workload. He was not able to reduce his workload and did not comply with his medication regime strictly.
- [19] Dr Pollock said that Mr Chadwick had not been receiving appropriate treatment for his condition after his initial diagnosis in 2002 and that it was likely that at the time of the offences committed in Queensland his medical condition was quite unstable as a result. She stabilised him on a regime of medication.
- [20] Dr Pollock says that as at June 2007 during his period of convalescence he was not doing his usual work. She continued her assessment and treatment over the 18 month period until September 2008 when he returned to Brisbane. She said that over that period his condition stabilised. He was on a regular regime of medication, and he had stable blood levels of medication. He attended to see Dr Pollock

regularly for review. His condition remained relatively stable and he was able to return to work.

- [21] Dr Pollock anticipated that he would remain well with ongoing appropriate management of his condition and to this end referred him for ongoing treatment in Brisbane. Her opinion was “a diagnosis of a medical condition is no barrier to employment as a solicitor provided his condition is stable and adequately monitored and treated by a professional clinician. To date regular counselling and medication have been effective but the long term details of his treatment would be at the discretion of his treating physician.”
- [22] Mr Chadwick said that after he moved to Queensland in September 2008, he endeavoured to commence consultations with a Queensland medical practitioner to continue his treatment but was unable to do so until recently. He said that he recently began seeing a medical practitioner and proposed to continue to see him at least monthly or as required.
- [23] He deposed that he is now following a stable and regimented medication regime and that he has now recovered from his illness and believes himself to be entirely competent to practise as a solicitor.
- [24] Given the agreed statement of facts, the issues for determination in these proceedings are whether Mr Chadwick’s conduct amounts to professional misconduct or unsatisfactory professional conduct and what the appropriate penalty should be. The term “professional misconduct” is defined in s 419 of the Act as follows:
- “(1) Professional misconduct includes –
- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.”
- [25] In *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498 Thomas J applied the following test at 507:

“The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”

[26] The term “unsatisfactory professional conduct” is defined in s 418 of the Act as follows:

“Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that 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.”

[27] The behaviour in this case has less to do with competency and diligence and is more concerned with whether or not the practitioner is a fit and proper person. His behaviour in creating the documents was dishonest and so constitutes professional misconduct. It was dishonest because he created documents on two different dates containing false details of the terms and conditions of his employment purporting to be from his employer and the documents were intended to advantage him financially. He was however unwell at the time and the documents were not actually used.

[28] The next question to be determined is the appropriate penalty. As was held in *QLS v Carberry*; *A-G v Carberry* [2000] QCA 450 at [38]:

“It is now trite to say that the primary role of proceedings such as those before the Tribunal is to protect the public from persons not fit to be held out as officers of the court and as a proper person to be entrusted with the duties and responsibilities of the solicitor: *Harvey v Law Society of New South Wales* (1975) 49 ALJR 362 at 364; *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279; *Clyne v New South Wales Bar Association* (1960) 104 CLR 186; *Adamson v Queensland Law Society Incorporated* [1990] 1 QdR 498. As was pointed out in *Attorney-General v Bax* [1999] 2 QdR 9 at 21 by Pincus JA, there is a subsidiary purpose in the public interest and that is to deter other practitioners who might otherwise engage in professional misconduct.”

[29] There is no element of punishment in the penalty imposed. The penalty is to protect the public.

[30] There have been other cases where solicitors have created false documents to cover up an error that they, or staff working under them, have made: *Legal Services Commissioner v Sorban* [2009] LPT 5 and *Legal Services Commissioner v Ramsden* [2006] LPT 10. Neither of those cases involved any intention by the practitioners to advantage themselves financially and both expressed contrition and remorse. In *Sorban* the Tribunal said of the conduct:

“The respondent accepts that there was no excuse for fabricating the e-mail. In summary, the respondent created a false document and sent it with the intention of deceiving his clients and the financier’s solicitor about the date when the e-mail had originally been sent.

This creation and sending of the false email was not done for direct pecuniary gain. What the respondent does say in his affidavit about his conduct was that he did it on the spur of the moment and that it was as a result of pride and embarrassment and concern not to convey the wrong impression to his clients. He also noted at the time that he had an exceptionally large workload.

... Because of the dishonesty involved in the conduct, it amounts to professional misconduct and I so find.”

- [31] At the hearing of this matter the Tribunal expressed some concern because of the lack of information provided as to the incorporated legal practice of which Mr Chadwick is a director and in particular whether his fellow director was aware of these proceedings. Mr Chadwick did not himself attend the disciplinary hearing so the matter was adjourned for his legal representatives to make further submissions. His legal representative made the following submissions:

“These further submissions address the issue raised by the Tribunal at the hearing of this matter on 1 June 2009, concerning the position of Mr Chadwick’s co-director at his firm, Winchester Young & Maddern.

The Respondent is currently a legal practitioner director of Winchester Young & Maddern, an incorporated legal practice pursuant to the *Legal Profession Act 2007* (‘the Act’).

His fellow director in this practice is Mr Glen Young, a Queensland solicitor admitted in 1976. Mr Young was previously the sole principal of Winchester Young & Maddern prior to its acquisition by McKoy Chadwick Lawyers (the respondent’s previous firm) on 1 May 2009.

Since that time, Mr Young and Mr Chadwick have together been the legal practitioner directors of Winchester Young & Maddern. It is intended though that Mr Young will soon resign as a legal practitioner director of the firm, and simply continue in the practice as an employee. This will result in Mr Chadwick being the sole legal practitioner director of the practice. The Respondent instructs that this arrangement was always intended, and that Mr Young’s directorship of the firm was a transitional arrangement agreed as part of the merger of the two firms. It is expected that Mr Young’s resignation as a director will be effective within the next couple of weeks.”

- [32] It is significant for the appropriate penalty that the behaviour the subject of these charges occurred in 2006 when the respondent was suffering from untreated illness; he subsequently obtained treatment and removed himself from practice while he undertook treatment and rehabilitation. He has subsequently returned to legal practice and according to his affidavit has maintained treatment and medication. There have been no other complaints against him since that time. He has apologised for that behaviour and in his affidavit assured the Tribunal that he is acutely aware of the need for his condition to be carefully managed and he is very attentive to the necessity of taking his prescribed medication without fail. It is of

concern, however, to the Tribunal that it does not appear that Mr Chadwick's fellow director knows of these matters and no references have been provided in support of Mr Chadwick.

- [33] Such a chronic illness is not, however, a reason for a legal practitioner not to practice, even on his or her own account, so long as the illness is or has been treated successfully and does not interfere with his or her capacity to practise honestly and competently.
- [34] The Commissioner initially asked for the following orders:
- (1) That the respondent be publicly reprimanded pursuant to s 456(2)(e) of the Act; and
 - (2) That the respondent pay a penalty in the order of \$2,000 to \$5,000 pursuant to s 456(4)(a) of the Act.

The Commissioner submitted that the following additional orders would be appropriate given Mr Chadwick's medical condition:

- (a) Mr Chadwick must continue such treatment as his treating doctor, or another appropriately qualified medical practitioner, may recommend for a period of at least 12 months; and
 - (b) The respondent must obtain a report from his treating doctor, or another appropriately qualified medical practitioner, and provide that report to the applicant within the next 12 months.
- [35] Such a condition is appropriate but the Tribunal is not minded to impose such a condition unless it has a current report from his treating doctor as to the treatment that the respondent is currently receiving and his agreement to provide another report on the applicant's condition within the next 12 months.
- [36] In addition the Commissioner has submitted, in response to a query from the Tribunal about the lack of supervision of the respondent, that it can and would undertake a twice-yearly external audit of the practice of which Mr Chadwick was a director for the next two years. This would form a further condition of an order to be made by the Tribunal.
- [37] The Tribunal was prepared to make an order in the terms sought but required a current report from his treating doctor as to the treatment that the respondent is currently receiving and his agreement to provide another report on the applicant's condition within the next 12 months, before it made any final order.
- [38] Further directions were given and the matter set down for further hearing. As a result of matters canvassed during that hearing the parties proposed a detailed order that the Tribunal is prepared to make. It recognises both the seriousness of the behaviour and that the practitioner is nevertheless presently a fit and proper person to engage in legal practice but also ensures the public interest by imposing conditions which ensures that he will remain a fit and proper person to engage in legal practice.
- [39] It is not necessary or desirable to set out all of those conditions in these reasons because of the terms of some of those conditions however their imposition will, in the Tribunal's view, protect the public interest.

[40] However, for the purposes of the public record the Tribunal records the following orders made by it:

1. The respondent is guilty of two counts of professional misconduct;
2. The respondent be publicly reprimanded pursuant to s. 456(2)(e) of the *Legal Profession Act 2007*; and
3. The respondent must continue such medical treatment as his treating doctor, or another appropriately qualified medical practitioner may recommend, for a period of 5 years; and
5. For a period of 5 years, the respondent authorises the Legal Services Commission to seek and obtain information (in writing or otherwise) from his treating doctor (or any future treating doctor) in a manner sufficient to inform itself as to;
 - (c) No more frequently than monthly - the respondent's attendance at appointments, and compliance with medication and treatment as prescribed; and
 - (d) No more frequently than yearly the respondent's health and treatment status generally;
8. Within 14 days the respondent is to produce and provide to the Legal Services Commission a risk management plan. The plan is to detail the implementation of measures by the respondent to ensure the satisfactory running of his practice in the event he is not able to attend to the running of his practice; and
9. Within 14 days the respondent is to provide to the Legal Services Commission the name of a suitably qualified person whom the respondent proposes is suitable to provide professional guidance and mentoring to the respondent in the course of the respondent's continuing legal practice; and
10. The respondent is to submit to a twice-yearly external audit of the practice of which the respondent is a Director, for the next 12 months; and
- ...
9. Should the applicant become aware of non-compliance on the part of the respondent with any part of these orders, the applicant has liberty to apply to the Tribunal for the matter to be relisted for further hearing.
11. That the respondent pay the applicant's costs in the sum of \$2,500.00 by the end of the calendar year, 2009.