

**CITATION:** Legal Services Commissioner v De Fraine  
[2015] QCAT 292

**PARTIES:** Legal Services Commissioner  
(Applicant)  
v  
Anthony Glen De Fraine  
(Respondent)

**APPLICATION NUMBER:** OCR146-14

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 9 July 2015

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Carmody**  
Assisted by:  
**Mr Michael Meadows, Legal Panel Member**  
**Mr Keith Revell, Lay Panel Member**

**DELIVERED ON:** 30 July 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **THE TRIBUNAL ORDERS THAT:**

1. The respondent be publicly reprimanded.
2. The respondent be required to pay a pecuniary penalty of \$500.00 to be paid in the following instalments:
  - a) 20% payable within 30 days.
  - b) 20% payable within 60 days.
  - c) 20% payable within 90 days.
  - d) 20% payable within 120 days.
  - e) 20% payable within 150 days.
3. The respondent pay the applicant's costs of and incidental to the disciplinary proceedings, to be assessed on the standard basis and

paid in the following instalments:

- a) 25% of the costs order is payable within 30 days of assessment;
- b) 25% of the costs order is payable within 60 days of assessment;
- c) 25% of the costs order is payable within 90 days of assessment; and
- d) 25% of the costs order is payable within 120 days of assessment.

**CATCHWORDS:**

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – LEGAL PRACTICE — where the respondent was an admitted legal practitioner – where the respondent’s legal practicing certificate expired in 2012 – where the respondent was engaged as a contractor for Strategic Lawyers – where the respondent represented two clients in respect of three hearings on two days – whether the respondent committed professional misconduct or unsatisfactory professional conduct.

*Legal Profession Act 2007 (Qld) ss 419, 452, 462*

*Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32*

**APPEARANCES and REPRESENTATION:**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

**REASONS FOR DECISION**

[1] This is a discipline application by the Legal Services Commissioner under s 452 of the *Legal Profession Act 2007 (Qld)* against the respondent, Mr Anthony Glen De Fraine. At all material times, the respondent was a legal practitioner admitted to practice law within Queensland.

[2] The applicant has charged the respondent with two counts:

1. On 4 April 2013, the respondent engaged in legal practice without being the holder of a practicing certificate ("**Count 1**");
  2. On 2 May 2014, the respondent engaged in legal practice without being the holder of a practicing certificate ("**Count 2**").
- [3] Count 1 relates to the representation of Mr Brent Bevan Perry in respect of a bail application before the Magistrates Court in Rockhampton.
- [4] Count 2 relates to the representation of Mr Perry in respect of an application for adjournment, and Mr Adam Lee Moore in respect of the seeking of a brief of evidence. Both instances of representation occurred on 2 May 2014 before Magistrate Press.
- [5] The respondent has been accommodating throughout the proceedings, admitting the relevant facts forming the foundation of both counts at the earliest possible opportunity. The respondent has also conceded that his conduct amounts to professional misconduct under s 419(1)(a) of the *Legal Profession Act 2007* (Qld). The respondent has merely requested the Tribunal to reflect favourably on the mitigating circumstances of the case so as to avoid unnecessary financial hardship caused by the imposition of a substantial pecuniary penalty and costs order.
- [6] As the respondent's conduct substantially falls short of the reasonable standard of competence and diligence expected of an Australian legal practitioner, it constitutes professional misconduct.
- [7] Engaging in legal practice without a legal practicing certificate is a serious violation of the legal and ethical responsibilities of an Australian legal practitioner. A practicing certificate confirms the suitability, in terms of competence and ethics, of the legal professional to practice law. The process of regular certification of lawyers preserves the integrity, ethics and standards of competence and diligence required of legal practitioners.
- [8] Counterbalanced against the gravity of the respondent's conduct are the exceptional mitigating features of this case. The three instances of representation without a valid legal practicing certificate are relatively minor in comparison to similar authorities. The respondent does not appear to have caused any personal or economic harm or disadvantage to any third party to these proceedings.
- [9] The respondent must recognise that certain representations made to the Court that he was a solicitor risked misleading the Court. I am, however, satisfied that any misleading of the Court which may have taken place was entirely unintentional. Another circumstance of aggravation is that the respondent, acting as a contractor at the relevant time for Strategic Lawyers, was purporting to practice as a principal solicitor, which requires a higher level practicing certificate. Statements made by investigator, Mr Kearney, appear to suggest that the misconduct of the respondent may have been partly caused by an inability to discharge the expenses associated with renewing his legal practicing certificate.

- [10] The respondent no longer practices law and is currently working as a support person for a non-profit charitable organisation that delivers assistance to homeless persons and persons at risk of homelessness. In 2013 the respondent indicated he would seek to practice law again in Queensland, but it is unclear whether this intention remains current. The respondent has no prior adverse disciplinary appearances or orders. The respondent, aside from these instances of practicing law without a valid legal practicing certificate, has lived an otherwise blameless life. For these reasons, personal deterrence and protection of the community are not significant factors.
- [11] Having regard to the significant financial rewards of legal practice, and the onerous requirements to obtain admission, general deterrence remains a material consideration. However, the Tribunal must impose a proportionate penalty which does not unduly penalise the respondent for the hypothetical future conduct of other persons who may seek to practice law without a valid practicing certificate. On balance, I am satisfied the respondent is not an appropriate vehicle for general deterrence, although it remains relevant.
- [12] In his affidavit, the respondent appears to appreciate the gravity of his offending conduct and has been highly cooperative with the Tribunal. The respondent displays remorse and contrition, and has signalled a willingness not to practice without a valid legal practicing certificate in the future. The respondent has explained the circumstances giving rise to financial hardship which stimulated his misconduct. The respondent has also attested to his present impecuniosity, which may render any significant pecuniary penalty disproportionately punitive.
- [13] I am satisfied that the making of a public reprimand against the respondent and imposing a pecuniary penalty of \$500.00 will sufficiently satisfy the applicable disciplinary objectives having regard to the relevant authorities, personal circumstances of the respondent and gravity of the offending. The pecuniary penalty should be paid in 20% instalments over five months.

### **Application for Costs**

- [14] The applicant seeks an order for costs relating to the disciplinary application. The applicant has been successful in prosecuting the respondent for professional misconduct on Counts 1 and 2.
- [15] No exceptional circumstances exist which justify this Tribunal refusing to order costs in favour of the applicant.<sup>1</sup> Therefore, this Tribunal possesses no discretion to refuse an application for costs.<sup>2</sup>

---

<sup>1</sup> *Legal Profession Act 2007* (Qld) s 462(1).

<sup>2</sup> *Ibid.*

[16] The Tribunal allows the application for a costs order in an amount to be assessed on the standard basis which is to be paid in the following instalments:

1. 25% of the costs order is payable within 30 days of assessment;
2. 25% of the costs order is payable within 60 days of assessment;
3. 25% of the costs order is payable within 90 days of assessment; and
4. 25% of the costs order is payable within 120 days of assessment.

### **Proposed Orders**

[17] The Tribunal orders that:

1. The respondent be publicly reprimanded.
2. The respondent be required to pay a pecuniary penalty of \$500.00, to be paid in the following instalments:
  - a) 20% payable within 30 days.
  - b) 20% payable within 60 days.
  - c) 20% payable within 90 days.
  - d) 20% payable within 120 days.
  - e) 20% payable within 150 days.
3. The respondent pay the applicant's costs of and incidental to the disciplinary proceedings, to be assessed on the standard basis and paid in the following instalments:
  - a) 25% of the costs order is payable within 30 days of assessment.
  - b) 25% of the costs order is payable within 60 days of assessment.
  - c) 25% of the costs order is payable within 90 days of assessment.
  - d) 25% of the costs order is payable within 120 days of assessment.