

CITATION: *Legal Services Commissioner v Gould* [2016]
QCAT

PARTIES: Legal Services Commissioner
(Applicant)
v
Robert John Gould
(Respondent)

APPLICATION NUMBER: OCR047-15

MATTER TYPE: Occupational Regulation matters

HEARING DATE: On the papers 30 May 2016 & 6 December
2016

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Megan Mahon, Legal Panel member
Dr Susan Dann, Lay Panel member

DELIVERED ON: 16 December 2016

DELIVERED AT: Brisbane

ORDERS MADE:

1. **The respondent is publicly reprimanded.**
2. **The respondent is to pay a fine in the sum of \$6,000.00 to be paid in equal monthly instalments over the period of 12 months from the date of this order.**
3. **Mr Andrew Gardiner be retained by the respondent to review the respondent's practice management.**
4. **The respondent is to meet with Mr Gardiner to review the respondent's intentions for the future.**
5. **Taking the respondent's intentions into account, Mr Gardiner shall review the file load in the respondent's practice and also the type and scope of management systems which the respondent has in place.**
6. **Mr Gardiner is to make recommendations**

to the respondent as to the appropriate legal and management systems that should be in place in his office.

7. Mr Gardiner must provide a report to the respondent, the Commissioner and the Queensland Law Society containing his recommendations for the appropriate legal and management systems that should be put in place and maintained within the respondent's legal practice.
8. The respondent must implement the recommended legal and management systems.
9. The respondent must meet with Mr Gardiner at least once every month over the next 4 months and then once in every 2 months over the following 8 months to review the respondent's practice to determine that the appropriate management systems are being adhered to by Mr Gould.
10. As soon as practicable after each of those meetings, Mr Gardiner will report to the Commissioner and the Queensland Law Society as to the outcome of the meetings and provide a final report to the Commissioner and the Queensland Law Society at the earlier of:
 - a) 12 months from the date of the appointment; or
 - b) the respondent not being a principal of a law firm and not holding a principle level practising certificate.
11. The respondent is to pay the applicant's costs to be agreed.
12. If agreement cannot be reached, then the costs are to be assessed on a standard basis, on the Supreme Court Scale under the *Uniform Civil Procedure Rules 1999 (Qld)*, in the manner that the costs would be assessed were the matter in the Supreme Court of Queensland.
13. The costs may be paid in equal monthly instalments within 12 months from the date of the agreement or assessment of

the costs.

14. Jeff D'Antoine and Karen Ngarimu-Antonio are to file in the Tribunal and serve on the respondent any further submissions they wish to make as to the Notice of Intention to Seek Compensation Order, by:

4:00pm on 6 February 2017.

15. The respondent is to file in the Tribunal and serve on the complainants any submissions in reply upon which he intends to rely, by:

4:00pm on 6 March 2017.

16. The Legal Services Commissioner must provide a copy of these reasons and the Tribunal order to Jeff D'Antoine and Karen Ngarimu-Antonio, by:

4:00pm on 22 December 2016.

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent was charged with misleading his client, misleading the Queensland Law Society and failing to supervise his employee – where the applicant alleged that the respondent misled the Queensland Law Society by telling them he thought his employee had an unrestricted practicing certificate – whether the conduct amounts to professional misconduct or unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLIGENCE AND DELAY – where the applicant charged the respondent with failing to maintain standards of competence and diligence by not advancing his client's matter in a timely fashion – where the Commissioner alleged that the respondent misled the client by falsely telling them the opposing counsel that was delaying the matter

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

Legal Profession Act 2007 (Qld) ss 418, 419, 462(1)

Legal Profession (Solicitors) Rule 2007 (Qld) r 37

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

Legal Services Commissioner v Bussa [2011] QCAT 338

Legal Services Commissioner v Bussa [2005] LPT 005

Legal Services Commissioner v Petchler [2009] LPT 024

Legal Services Commissioner v Smith [2014] QCAT 518

APPEARANCES and REPRESENTATION (if any):

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

REASONS FOR DECISION

- [1] The Legal Services Commissioner alleges that the following charges constitute professional misconduct and/or unsatisfactory professional misconduct:

Complaint of D'Antoine

- [2] Charge 1 – Failed to maintain reasonable standards of competence and diligence.

- a) Between 30 April 2010 and 20 April 2013, Mr Gould failed to maintain reasonable standards of competence and diligence in the conduct of a matter in which he acted for Jeff D'Antoine and Karen Ngarimu-Antonio.

- [3] Charge 2 – Mislead client.

- a) On 14 April 2011, and an unknown date between 8 March 2013 and 31 March 2013, Mr Gould misled his client Jeff D'Antoine.

- [4] Charge 3 – Mislead Queensland Law Society.

- a) On 28 November 2013, the respondent misled the Queensland Law Society Inc.

Complaint of Strachan

- [5] Charge 4 – Failed to exercise reasonable supervision.

- a) Between 8 March 2012 and 1 May 2012, Mr Gould breach rule 37 of the *Legal Profession (Solicitors) Rule 2007* (Qld).
- [6] Charge 5 – Mislead Queensland Law Society.
- a) On 30 September 2013, the respondent misled the Queensland Law Society.

Unsatisfactory professional conduct and professional misconduct

- [7] Section 418 of the *Legal Profession Act 2007* (Qld) ('LPA') provides that 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 from a reasonably competent Australian legal practitioner.
- [8] Section 419 LPA provides that professional misconduct includes unsatisfactory professional conduct if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.
- [9] In the case of *Adamson v Queensland Law Society Inc*,¹ Thomas J formulated the test for professional misconduct as follows:

“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.”

Background and Contentions

- [10] On 3 March 2016, the parties filed a Statement of Agreed Facts.
- [11] Charge 1 related to the conduct of District Court proceedings. The Commissioner asserts that Mr Gould, during a three year period, failed to maintain reasonable standards of competence and diligence in that he failed to:
- a) review the matter at an early stage and determine whether the claim required amendment;
 - b) file pleadings in furtherance of the claim in a timely way;
 - c) obtain the leave of the court and remit the matter to the Magistrates Court in a timely way;
 - d) respond to correspondence with the defendant's solicitors in a timely way;
 - e) brief counsel to settle amended pleadings in a timely way;
 - f) follow the usual rules and procedures relevant to civil claim;
 - g) withdraw instructions from counsel when counsel had unduly delayed in carrying out instructions; and

¹ [1990] 1 Qd R 498 at 507.

- h) return phone calls made by the client.
- [12] Citing the cases of *Legal Services Commissioner v Smith*², *Legal Services Commissioner v Bussa*³ and *Legal Services Commissioner v Petchler*⁴ the Commissioner submits that the conduct in respect of charge 1 should be characterised as professional misconduct.
- [13] As to charge 1, Mr Gould submits that he had extreme difficulty in obtaining advice from counsel.⁵
- [14] Mr Gould admits that he should have done more in relation to the matter instead of relying on counsel to take the lead.⁶
- [15] Mr Gould says that he made a serious mistake by taking instructions in an area of law with which he was unfamiliar, instead relying upon expertise, to some degree, of counsel, which was not forthcoming.⁷
- [16] He agrees that there was an inordinate delay in the progress of the matter.⁸
- [17] He says he believes this was contributed to by:
- a) being the only solicitor within the firm at the time;
 - b) the Global Financial Crisis ramifications on income, not allowing the employment of additional staff;
 - c) his suffering from burn-out and mild depression resulting in financial pressures; and
 - d) being assured by the previous Solicitor having the conduct for the matter that he could rely upon counsel.⁹
- [18] Mr Gould accepts that his conduct would fall within the definition of unsatisfactory professional conduct but does not accept that his conduct falls within the definition of professional misconduct.¹⁰
- [19] Charge 2 is based upon Mr Gould having forwarded an email to his client in which he advised his client that the delay in processing the claim (the basis of charge 1) related to the defendant's solicitors. The Commissioner alleges that this email was misleading as the delay was due to Mr Gould and not the other solicitors.

² [2014] QCAT 518.

³ [2011] QCAT 338 & [2005] LPT 005.

⁴ [2009] LPT 024.

⁵ Submissions on behalf of the respondent filed 5 April 2016, paragraph 7,

⁶ Ibid, paragraph 8.

⁷ Ibid, paragraph 9.

⁸ Ibid, paragraph 10.

⁹ Submissions on behalf of the respondent filed 5 April 2016, paragraph 10.

¹⁰ Ibid, paragraph 3; "relevant definitions" page 2.

- [20] The Commissioner submits that this charge should be taken into account as forming part of Mr Gould's conduct and should amount to professional misconduct.¹¹
- [21] Mr Gould submits that he was of the incorrect opinion that the other solicitors were at fault, although he concedes that was not the case.¹² He says that he was awaiting advices from counsel.¹³
- [22] Mr Gould submits that charges 1 and 2 arise from the same set of circumstances and should in fact be the one charge.¹⁴
- [23] Charge 3 arises from communications between Mr Gould and the Queensland Law Society. On 28 November 2013, Mr Gould wrote to the Queensland Law Society saying:
- a) he had informed his client that he was not a litigation expert and due to his work load with other clients he was unable to process the matter quickly; and that it may be in the clients best interests for another firm to represent the client; and
 - b) the client elected to stay with the firm with the full knowledge of the workload of the respondent and the lack of experience in the area.
- [24] The Commissioner asserts that these statements were misleading, as Mr Gould never informed his client as to those matters.¹⁵
- [25] The Commissioner asserts that the charge be taken into account as part of Mr Gould's conduct and supporting the conclusion that the conduct should amount to professional misconduct.¹⁶
- [26] On the other hand, Mr Gould asserts that he did have the relevant conversations with his client; he says it happened more than once, but that he has no written note of any of the conversations.¹⁷
- [27] Mr Gould notes that he did in fact attempt to transfer the file to another firm, however it was subsequently returned. Later he did transfer the file to another firm in Maroochydore.¹⁸
- [28] Charge 4 arises from Mr Gould's employment of Ms Pryor, an employed solicitor, and Ms Hicks a conveyancing clerk at Home Sweet Home ('HSH') Solicitors.
- [29] When acting for Mr Strachan, issues arose concerning a conveyancing transaction. Advice was provided to Mr Strachan concerning the

¹¹ Submissions on behalf of the applicant filed 31 March 2016, paragraph 20.

¹² Submissions on behalf of the respondent filed 5 April 2016, paragraph 11.

¹³ Ibid.

¹⁴ Ibid, paragraph 12.

¹⁵ Submissions on behalf of the applicant filed 31 March 2016, paragraph 22.

¹⁶ Ibid, paragraph 23.

¹⁷ Submissions on behalf of the respondent filed 5 April 2016, paragraph 13.

¹⁸ Ibid, paragraph 15.

implications of the foreign trust in the context of the need to obtain approvals from the Foreign Investment Review Board.¹⁹

- [30] The Commissioner submits that charge 4 should be taken into account as part of Mr Gould's conduct during the relevant period such that the conduct should be regarded as professional misconduct.
- [31] Mr Gould accepts that he failed to exercise full time supervision of the two staff members at HSH Conveyancing Solicitors.²⁰
- [32] Mr Gould says he employed a "supposedly competent" property lawyer to manage and oversee his conveyancing department but that this person was far from competent and experienced in the field.²¹
- [33] Mr Gould asserts that it was not until after the departure of the overseeing property lawyer that the issue was discovered.²²
- [34] Mr Gould asserts that he was not aware of what Mr Strachan was told by either the supervising property lawyer or the conveyancer under her supervision.²³
- [35] Charge 5 arises from the fact that on 30 September 2013, Mr Gould wrote to the Queensland Law Society stating that in respect of Ms Pryor's work as a solicitor, he was of the belief that Ms Pryor was the holder of a current unrestricted practicing certificate during her period of employment. However, he had by email to Ms Pryor dated 20 April 2011, noted that Ms Pryor was only admitted in 2010 and had a restricted employee certificate.
- [36] The Commissioner submits that this information be taken into account by the Tribunal as forming part of Mr Gould pattern of behaviour during the period of the charges with the result that the conduct should be regarded as professional misconduct.²⁴
- [37] Mr Gould does not address this issue in his submissions.

Discussion

- [38] Neglect or delay by a legal practitioner are capable of falling within the definitions of either professional misconduct or unsatisfactory professional conduct, as they amount to conduct which falls short of the standard of competence and diligence that a member of this public can expect of a competent legal practitioner. Whether the conduct is in the more serious category of professional misconduct depends upon the particular factual matrix and whether the conduct is a sufficiently substantial or consistent failure to maintain a reasonable standard of competence and diligence.

¹⁹ Submissions on behalf of the applicant filed 31 March 2016, paragraph 25.

²⁰ Submissions on behalf of the respondent filed 5 April 2016, paragraph 17.

²¹ Ibid, paragraph 1, page 5.

²² Ibid, paragraph 3, page 5.

²³ Ibid, paragraph 1, 2, 3 and 4, page 6.

²⁴ Paragraph 29, submissions on behalf of the applicant filed 31 March 2016.

- [39] If the conduct is part of a pattern of conduct, it is likely that the conduct will constitute the more serious characterisation of professional misconduct rather than unsatisfactory professional conduct.
- [40] When neglect or delay leads to a loss of rights, such as where the legal practitioner allows a limitation period to expire, this is a matter which is relevant. In those circumstances, the conduct is more likely to be regarded as sufficiently substantial so as to amount to professional misconduct.
- [41] When a solicitor accepts instructions in a matter on behalf of a client, it is the solicitor's responsibility to ensure that the matter is conducted in a timely and efficient way, so as to preserve and progress the client's interests.
- [42] It is not acceptable that a solicitor completely relies upon a barrister. When counsel is briefed, both the solicitor and the barrister have independent duties to the client, and are each accountable.
- [43] If a client approaches a solicitor to act in an area of law in which the solicitor is unfamiliar and considers himself or herself to be unable to properly discharge his or her responsibilities to the client, the solicitor should not accept instructions in such a matter.
- [44] Mr Gould's conduct in relation to charge 1 concerned one particular matter. Whilst the conduct was over a lengthy period of time, it was not repeated across other matters and did not involve the client being deprived of rights. It was not, of itself, sufficiently substantial or consistent to amount to professional misconduct but was unsatisfactory professional conduct.
- [45] As to charge 2, whilst it arises out of the same set of facts as charge 1, it raises a different and more serious allegation from that which is contained in charge 1. Charge 2 asserts that Mr Gould misled his client by saying that the delay in progressing the claim was because of the other solicitors. Mr Gould explanation seems to be that he was incorrect in his opinion that the defendant's solicitors were at fault, and in suggesting this he refers to an email which he says shows that he believed he was awaiting advices from counsel.²⁵
- [46] His assertion does not answer the charge. The fact that he may have been awaiting advices from counsel does not lead to the conclusion, as he expressed it to his client, that the other solicitors were causing the delay.
- [47] The relationship between the solicitor and the client must be a relationship founded on trust. The legal practitioner is the trusted advisor. There must be open and truthful communication between the solicitor and the client and the solicitor must be entirely honest. If the solicitor is encountering difficulties, which mean that matters might be delayed, the appropriate

²⁵ Paragraph 11, submissions of Mr Gould filed 5 April 2016.

course is for the solicitor to be open with the client and to take informed instructions, which are in the best interests of the client. Emails, which mislead the client, such as that which were sent by Mr Gould, amount to conduct which falls substantially 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.

- [48] Likewise, a legal practitioner is required to be honest in dealings with the regulator (the Commissioner) or professional associations such as the Law Society or the Queensland Bar Association.
- [49] Mr Gould denies having misled the Law Society as to his discussions with his client regarding his expertise and his workload limitations. However, as to that issue, he failed to keep any written records of those conversations. Failure to keep adequate records is itself, a failure to achieve a standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.
- [50] In relation to charge 5, the allegation concerning misleading the Queensland Law Society, Mr Gould does not address the allegations made. It seems from the fact that his communication dated 20 April 2011 was inconsistent with his communication with the Law Society dated 30 September 2013, that he did mislead the Queensland Law Society. At the least, he was reckless in the way in which he approached these communications, not having paid proper attention to the duty of honesty and candour, which he owed. The Tribunal finds that Mr Gould misled the Queensland Law Society.
- [51] Mr Gould's conduct in misleading his client and misleading the Queensland Law Society are serious, particularly when considered in the context of the other charges and are sufficiently substantial as to amount to professional misconduct.
- [52] A legal practitioner has a duty to supervise employed staff. The level of supervision required depends upon the level of experience of the staff member. In the case of a staff member who holds a restricted practicing certificate, and has been admitted for a short time, the level of supervision required will be at a high level.
- [53] In answer to this charge, Mr Gould is critical of a property lawyer who he engaged to manage and oversee his conveyancing department. The employment of a more senior lawyer, in a management role, does not absolve the principal of overall responsibility with respect to supervision. In failing to supervise his employed solicitor, who was the holder of a restricted practicing certificate, Mr Gould's conduct fell 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.
- [54] Taking into account that Mr Gould had in fact employed a more senior practitioner to manage and oversee his conveyancing department, and so

believed that the more junior practitioner were being supervised, Mr Gould's conduct in relation to charge 4 is not sufficiently substantial or repeated to amount to professional misconduct but does amount to unsatisfactory professional conduct.

- [55] Overall, Mr Gould's conduct falls short to a substantial degree of the standard of professional conduct observed or approved by members of good repute and competency.

Sanction – Contentions

- [56] The Commissioner refers to the cases of *Legal Services Commissioner v Bussa*²⁶ and *Legal Services Commissioner v Smith*²⁷ in submitting that there should be:

- a) a public reprimand;
- b) a penalty between \$6,000.00 and \$10,000.00; and
- c) engagement of the services of a person to provide advice as to the improvement and implementation of appropriate management systems of his practice to enable the provision of legal services by Mr Gould and in accordance with the professional obligation of Australian legal practitioners and to provide a report to the Commissioner within 12 months of the completion of the order.²⁸

- [57] Mr Gould accepts that a penalty should be imposed, however submits that principles of general and personal deterrence are usually reserved for criminal matters.²⁹

- [58] Mr Gould draws attention to the fact that:

- a) he is 66 years of age and has previously not been subject to any disciplinary proceedings;
- b) he was admitted to practice as a solicitor in Queensland in February 1986, in New South Wales in 1987 and admitted to the High Court in 1991;
- c) he was employed by the Department of Justice and Attorney General from 1996 to 1989, rising to the rank of Clerk of the Court and acting Magistrate at Noosa;
- d) he resigned from the public service and embarked in private practice as an employed solicitor in 1989 serving in Gladstone and Yeppoon. Whilst in Gladstone he commenced and maintained the Duty Lawyer Scheme and was part of the Education Department's legal studies

²⁶ [2011] QCAT 338.

²⁷ [2014] QCAT 518.

²⁸ Paragraph 5, submissions on behalf of the applicant filed 31 March 2016.

²⁹ Paragraph 23, submissions of Mr Gould filed 5 April 2016.

program, attending the local high School and tutoring studies in legal studies;

- e) in 1991, he commenced practice in his own account until 1996. During this time, he was a volunteer as Maroochydore Community Legal Centre;
- f) later he was employed as a solicitor in Morayfield and Buddina before being employed and moving to Beenleigh;
- g) in 2001, whilst at Beenleigh he was employed as the principal of a new law firm and later established the law firm and became principal;
- h) he moved to the Sunshine Coast to manage another law firm, which, in 2013, he took over as principal;
- i) he has not since approximately 2012, received instructions or acted in matters in the field of Civil Litigation;
- j) his practice has been to employ competent and experienced persons with unrestricted practicing certificates;
- k) he is solely engaged in the area of Criminal Law;
- l) with exception of a period of approximately 2 years he has been engaged in the practice of law from 1986 mostly on his own account or employed as a principal and has never previously been the subject of any adverse disciplinary findings;
- m) he has now changed the focus of his law firm to be very selective in the receipt of instructions and only within the field of his expertise and that of his employed practitioners. All other work is referred to other firms;
- n) at the time of the events in question, his physical and mental state were influenced by a particularly acrimonious divorce and subsequently a bad separation from his new partner who took his one year old son;
- o) he was suffering from depression and diagnosed by his local medical practitioner as suffering from a burn out, which was also the time of the global financial crisis;
- p) he has now learnt, with the assistance of medical advice, better methods of dealing with stress of normal life and the life of a busy legal practice;
- q) he did approach the Queensland Law Society regarding attending the practice management course and was advised he did not have to attend; and
- r) he provided testimonials from clients of his Maroochydore practice.

- [59] Mr Gould submitted that appropriate orders should be:
- a) public reprimand;
 - b) a penalty up to \$5,000.00 – that he be allowed a period of six months to pay; and
 - c) such further or other order as the Tribunal deems appropriate.
- [60] Mr Gould submitted that there should be no need for a third party to review his practice management.
- [61] The Tribunal sought further submissions, as to the order which was sought regarding the engagement of the person to provide advice as to improvement and implementation of appropriate management systems. The Tribunal sought submissions as to:
- a) whether such engagement was necessary for the protection of the public;
 - b) the nature of such engagement;
 - c) the identity of a suitable person; and
 - d) the steps proposed to be taken in such an engagement and the timing of the steps.
- [62] The Commissioner submitted that, because of the very nature of the charges, to provide for the protection of the public in the future it is necessary to have Mr Gould engage assistance in practice management to ensure the type of conduct will not occur in the future.³⁰
- [63] The Commissioner submitted that such engagement would assist in improvements to Mr Gould's practice management considered necessary, particularly having regard to charges 1 and 4.³¹
- [64] The Commissioner identified Dr Peter Lynch as an appropriate person and provided a report by Dr Lynch.³²
- [65] In the report, Dr Lynch sets out the steps, which would be taken if he was engaged.
- [66] Mr Gould submitted that he is a 66-year-old man who has never been subject to any adverse disciplinary proceedings in the past.³³
- [67] Mr Gould referred to his current practice, over three locations, which comprised a significant volume of legally aided criminal and family law files.³⁴ He says that he has employed only senior lawyers.

³⁰ Further submissions on behalf of the applicant filed 28 June 2016, paragraph 3,

³¹ Ibid, paragraph 4.

³² Ibid, paragraph 8.

³³ Further submissions on behalf of the respondent filed 27 June 2016, paragraph 7,

³⁴ Ibid, paragraph 8.

- [68] Mr Gould informed the Tribunal that the Legal Aid Office terminated the Legal Aid preferred supplier agreements with the likelihood that, as a result, he (and his practices) will have a drastically reduced workload and “that staff will leave or be terminated”.³⁵
- [69] Mr Gould refers to the primary aim of the Tribunal being to protect the public from persons not fit to be held out as officers of the Court and submits that there is no need to engage the services of a practice consultant in order to protect the interests of the public.³⁶
- [70] Mr Gould further submits that his workload going forward will greatly diminish which will result in there being less need for the public to be protected by implementation of a third party overseeing his interests.³⁷
- [71] In the event that the Tribunal were to find against Mr Gould as to whether the engagement of the third party is necessary, Mr Gould submits that any review should take account of the number of files, which remain after the legal aid work is removed. He submits the third party should ascertain what Mr Gould intends moving forward. Once that intention is defined the type and scope of management systems in place could be reviewed. The third party could prepare a report for Mr Gould as to what he believes would be the best for Mr Gould given what he wished to achieve with the lesser volume of files.³⁸
- [72] Mr Gould further submitted that the appointed person could have further scheduled meetings every few months to assist and mentor him with the appointed person providing a final report to the Commissioner at the early of:
- a) 12 months from the date of appointment; or
 - b) Mr Gould not being a principal of a law firm.³⁹
- [73] Mr Gould identifies as a suitable person, Mr Andrew Kenneth Gardiner and Mr Gould provided details for Mr Gardiner.⁴⁰

Sanction – Discussion

- [74] The primary purpose of disciplinary proceedings is not to punish the practitioner but to protect the public.
- [75] The public interest is advanced, and the purpose is satisfied if the effect of the order made is to deter other practitioners from engaging in the conduct, which is the subject of the disciplinary proceedings. A significant consideration as to sanction is the deterrent effect. Practitioners must appreciate that conduct which is unsatisfactory professional conduct or

³⁵ Ibid, paragraph 15.

³⁶ Ibid, paragraph 18.

³⁷ Ibid, paragraph 19.

³⁸ Ibid, paragraph 22.

³⁹ Ibid, paragraph 23 & 24.

⁴⁰ Ibid, paragraph 25 & 26.

professional misconduct carries with it a serious risk and practitioners should be deterred from such conduct.

- [76] The imposition of a public reprimand is appropriate.
- [77] Of the authorities referred to by the parties, those which are relevant in the current circumstances are *Legal Services Commissioner v Bussa*⁴¹ and *Legal Services Commissioner v Smith*.⁴²
- [78] In the case of *Bussa* Alan Wilson J (then President of QCAT) imposed a public reprimand and a fine of \$10,000.00 and ordered that the respondent engage the services of a person to provide advice to improve and implement appropriate management systems. In the case of *Legal Services Commissioner v Smith* the Tribunal imposed a public reprimand and a penalty of \$6,000.00 ordering that the respondent engage an independent expert to obtain advice to improve and implement an appropriate management system.
- [79] The facts of this case more closely align with those in *Smith* than *Bussa*. On that basis, the orders made will include a public reprimand and a fine of \$6,000.00.
- [80] The nature of the conduct which led to the charges involves delay, failure to appropriately supervise staff in more than one office and not being completely candid in communications with both the client and the Queensland Law Society. One of Mr Gould's explanations for the conduct was that he found himself in a position where he had no staff due to external circumstances such as the global financial crisis and he was undergoing financial stress.
- [81] Mr Gould now finds himself in a very similar position in which he has offices at a number of locations, his file numbers will be substantially reduced and his staff will leave or be terminated.
- [82] In the view of the Tribunal, it is, without doubt, necessary for the protection of the public that Mr Gould engage the services of a person to provide advice as to appropriate management systems within his practice.
- [83] That advice could assist Mr Gould to efficiently conduct a practice with the reduced number of files and reduced staff numbers so that systems are in place to ensure, in the changed circumstances, services can be provided to clients at a standard of competence and diligence, which should be expected of a reasonably competent legal practitioner.
- [84] Two persons have been nominated. Each of the persons nominated seems to have adequate qualifications for the task.
- [85] However, in the case of Mr Gardiner - he has been known to Mr Gould for a number of years, has the confidence of Mr Gould, has spoken to Mr

⁴¹ [2011] QCAT 338.

⁴² [2014] QCAT 518.

Gould extensively as to the proceedings, has been in contact with the Legal Aid Office and has knowledge of the matters that surround the determination of the preferred supplier agreements.

[86] If Mr Gould wishes to continue to hold a principal level practicing certificate, it is ordered that:

- a) Mr Gardiner be retained by Mr Gould to review his practice management;
- b) Mr Gould meet with Mr Gardiner to review Mr Gould's intentions for the future;
- c) taking Mr Gould's intentions into account, Mr Gardiner shall review the file load in Mr Gould's practice and also the type and scope of management systems which Mr Gould has in place;
- d) Mr Gardiner will make recommendations to Mr Gould as to the appropriate legal and management systems which should be in place in his office;
- e) Mr Gardiner must provide a report to Mr Gould, the Commissioner and the Queensland Law Society containing his recommendations for the appropriate legal and management systems which should be put in place and maintained within Mr Gould's legal practice;
- f) Mr Gould must implement the recommended legal and management systems;
- g) Mr Gould must meet with Mr Gardiner at least once every month over the next 4 months and then once in every 2 months over the following 8 months to review Mr Gould's practice to determine that the appropriate management systems are being adhered to;
- h) as soon as practicable after each of those meetings, Mr Gardiner will report to the Commissioner and the Queensland Law Society as to the outcome of the meetings; and
- i) Mr Gardiner will provide a final report to the Commissioner and the Queensland Law Society at the earlier of:
 - (i) 12 months from the date of the appointment; or
 - (ii) Mr Gould not being a principal of a law firm.

[87] The Legal Services Commission shall have liberty to apply for further orders in these proceedings including as to sanction at any time before the date which is 2 months after the final report of Mr Gardiner.

Costs

[88] The Tribunal must make an order requiring that a practitioner found to have engaged in unsatisfactory professional conduct or professional

misconduct to pay costs unless the Tribunal is satisfied that exceptional circumstances exist.⁴³

- [89] The Commissioner seeks an order as to costs and Mr Gould has suggested that an order be made that he pay the Commissioner's costs as agreed.
- [90] The Tribunal orders that the respondent pay the applicant's costs to be agreed, and if agreement cannot be reached then the costs to be assessed on a standard basis on the Supreme Court Scale under the *Uniform Civil Procedure Rules 1999* (Qld) in the manner that the costs would be assessed were the matter in the Supreme Court of Queensland.

Timing

- [91] Mr Gould has asked if he be allowed a period of at least six months in which to pay the penalty.
- [92] The Tribunal takes into account the information concerning the reduction in size of the practitioner's practice and the fact that the practitioner will incur costs in relation to the services of Mr Gardiner and so orders that:
- a) the amount of the penalty, namely \$6,000.00, be paid by the respondent to the applicant by equal monthly instalments over the period of 12 months from the date of the order; and
 - b) that the costs be paid by the respondent to the applicant by equal monthly instalments over the period of 12 months from the date they are agreed, or failing agreement, then from the date of the assessment of the costs.

Compensation order

- [93] Jeff D'Antoine and Karen Ngarimu-Antonio have filed a Notice of Intention to Seek Compensation Order in relation to these proceedings.
- [94] The Tribunal will allow the parties the opportunity to make submissions, based upon the decision which has been made as to the conduct, regarding the Notice of Intention to Seek Compensation Order filed by the complainants.
- [95] The Tribunal orders the following:
- a) Jeff D'Antoine and Karen Ngarimu-Antonio are to file in the Tribunal and serve on the respondent any further submissions they wish to make as to the Notice of Intention to Seek Compensation Order, by:
4:00pm on 6 February 2017.

⁴³ *Legal Profession Act 2007* (Qld) s 462(1).

- b) The respondent is to file in the Tribunal and serve on the complainants any submissions in reply upon which he intends to rely, by:

4:00pm on 6 March 2017.

- c) The Legal Services Commissioner must provide a copy of these reasons and the order to Jeff D'Antoine and Karen Ngarimu-Antonio, by:

4:00pm on 22 December 2016.