

DECISION

Case number: OCR249-10

Applicant: Legal Services Commissioner

Respondent: Mr Salvatore Antonio La Spina

Before: Justice Fryberg
Assisted by:
Ms J Cameron
(Practitioner Panel Member)
Ms K Keating
(Public Panel Member)

Hearing Date: 16 December 2011

Proceeding Type: On-Papers Hearing

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. No orders made.

Signed



Justice Fryberg
Supreme Court Judge
Queensland Civil and Administrative Tribunal

Date: 26 April 2012

CITATION: *Legal Services Commissioner v La Spina*
[2012] QCAT

PARTIES: LEGAL SERVICES COMMISSIONER
(Applicant)
v
SALVATORE ANTONIO LA SPINA
(Respondent)

APPLICATION NUMBER: OCR249-10

HEARING DATE: 16 December 2011

HEARD AT: Brisbane

MATTER TYPE: Occupational regulation matters

DECISION OF: **Justice Fryberg**
Assisted by:
Ms J Cameron
(Practitioner Panel Member)
Ms K Keating
(Public Panel Member)

DELIVERED ON: 26 April 2012

DELIVERED AT: Brisbane

ORDERS MADE: **No order.**

CATCHWORDS: PROFESSIONS AND TRADES –
LAWYERS – COMPLAINTS AND
DISCIPLINE – DISCIPLINARY
PROCEEDINGS – PROFESSIONAL
MISCONDUCT OR UNSATISFACTORY
PROFESSIONAL CONDUCT – Width of
Tribunal's discretion – Includes making no
order

Legal Practitioners Act 2007, ss 456, 462

APPEARANCES AND REPRESENTATION (if any):

This matter was heard and determined on the papers with the consent of the parties pursuant to s 32 of *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act). The Tribunal met to consider written submissions from the parties on 16 December 2011.

REASONS FOR DECISION

[1] In October 2010 the Commissioner filed the following charges against Mr La Spina:

"1. That on a date unknown between 1 November 2005 and 30 November 2005, the respondent falsely witnessed the signature of Michael Joseph Cash ('Cash') on a statutory declaration ('declaration').

Particulars

1.1 At all material times, the respondent was:

- (a) a local lawyer as defined in s.5(2) of the *Legal Profession Act 2007*;
- (b) a solicitor in the employ of Carne Reidy Herd Lawyers;
- (c) in a relationship with Ms Carol Ann Cottell ('Cottell')

1.2 In or around November 2005 the respondent drafted the declaration for the purpose of use in domestic violence proceedings involving Cottell and her former de facto partner.

1.3 The declaration attested to Cash having witnessed acts of violence against Cottell by her former de facto partner.

1.4 On a date unknown in November 2005 the declaration was purportedly executed by Cash.

1.5 On the following day, the respondent signed the declaration as witness in circumstances where Cash was not known to the respondent, and the execution of the declaration did not take place in his presence, as the respondent well knew.

1.6 In the premises, the respondent's conduct amounts to unsatisfactory professional conduct or professional misconduct.

2. That on diverse dates between 1 July 2005 and 30 December 2005, the respondent failed to maintain his professional independence and objectivity whilst acting on behalf of Ms Carol Ann Cottell ('Cottell').

Particulars

2.1 Between 1 July 2005 and 30 December 2005 the respondent created or allowed to develop a conflict of interest and duty by acting on behalf of Cottell at the same time as he shared a close person relationship with her.

2.2 In breach of his duty as a solicitor, the respondent failed to maintain his professional independence and objectivity in that he:

- (a) agreed to act on behalf of Cottell;
- (b) agreed to prepare the declaration referred to in charge 1 above;
- (c) agreed to witness the signature of Cash on the declaration referred to in charge 1 above;
- (d) agreed to prepare and send correspondence on behalf of Cottell dated 21 November 2005; 12 December 2005 and 13 December 2005.

2.3 In the premises, the respondent's conduct amounts to unsatisfactory professional conduct or professional misconduct."

- [2] Mr La Spina admits the conduct alleged in para 1.5 and accepts that this conduct amounted to professional misconduct.
- [3] The relevant facts are set out in a statement of agreed facts, which I direct be marked as ex 1 and an affidavit sworn by Mr La Spina and filed in the Tribunal on 8 September 2011.

The circumstances of the misconduct

- [4] Mr La Spina was admitted to practice as a solicitor in 2003 when aged about 36. He is and was at all material times an Australian lawyer within the meaning of s 5 of the *Legal Profession Act 2007*. In 2005 he held a practising certificate and was an employed solicitor with a Brisbane firm.
- [5] In that year Mr La Spina was dating a woman named Carol Ann Cottell and in about July they commenced what is coyly described as "a personal relationship". Cottell told Mr La Spina that there was a domestic violence order in place against her former partner and father of one of her children, Anthony Griffin. She said that over a number of years he had subjected her to violence and harassment and made threats to kill her and her children and false complaints to government agencies about her. She said that he was still making threats against her and the children, that she feared for their safety and that she wanted to take action to stop him from harassing her. She said she had been advised by a firm of solicitors that obtaining an injunction would be an easy task, but that the costs would be high.
- [6] Mr La Spina agreed to help her in his own time. He opened a file at his firm and commenced drafting documents for an injunction at home. In November 2005 he obtained informal advice from counsel about the injunction. Counsel advised that an application for an injunction was not the appropriate action to take. Cottell decided to apply for an extension of the domestic violence order. She instructed Mr La Spina that a long-time family friend, Senior Sergeant Michael Cash of the Queensland Police, was willing to sign a statutory declaration detailing acts of violence by Mr Griffin which he had witnessed. Because he was posted as an adviser to the Solomon Islands at that time, Mr Cash was not available to see Mr La Spina. Instead, Cottell gave him copies of e-mails between herself and Mr Cash

which set out the latter's recollections of those acts. From that material Mr La Spina drafted a statutory declaration.

- [7] What happened next is not altogether clear. Presumably Mr La Spina gave Cottell a paper copy of the declaration to send to Mr Cash for signature. Mr Cash signed it on or about 13 November but his signature was not witnessed as required by the *Oaths Act 1867*.¹ On 14 November she gave the signed declaration to Mr La Spina. She told him that Mr Cash had been in Brisbane for a farewell dinner the previous day, but had now returned to the Solomon Islands. Mr La Spina signed it as the witness.
- [8] Mr La Spina deposed, unchallenged, that he did so because he believed that Mr Cash had signed it and approved of its contents; that Mr Cash had left the country; and that Cottell's life and those of her children were still in imminent danger from Griffin and the declaration would assist her in obtaining protection. He further deposed that upon reflection, several days later, he decided that he would not permit the declaration to be used in any proceedings. He did so because he was not comfortable with having improperly witnessed it. It was in fact never used to prove what was alleged in it.

Subsequent events

- [9] In November or December 2005 Cottell asked Mr La Spina to commence domestic violence proceedings against Griffin. He had told her that if she wished to pursue such an application she would need to obtain independent legal representation. He ceased acting for her on or about 14 December 2005. Their relationship ended about five months later.
- [10] More than a year later, in April 2007, Mr La Spina received a telephone call from Griffin's wife, Dawn. She asked Mr La Spina if he had witnessed a statutory declaration sworn by Mr Cash on 9 December 2006. She said such a declaration had been filed in both the Family Court and the Magistrates Court. It subsequently emerged that Cottell had forged Mr La Spina's signature (the material does not make it clear whether she also forged that of Mr Cash). Mr La Spina made affidavits for use by Mr Griffin in proceedings between him and Cottell in the Federal Magistrates Court and in the Magistrates Court of Queensland, in which he swore that he had never met Mr Cash. He did so, knowing that he was exposing himself to disciplinary action.
- [11] Cottell was aware of his vulnerability. At the end of May she sent him a letter asserting that Mr Cash was going to lodge a formal complaint to the Queensland Law Society, and that the only way to save his career was to provide her with a declaration retracting what was in his affidavits and declaring facts and circumstances which were false and which had never occurred.
- [12] By July 2007 Cottell had been charged with forgery and attempting to pervert the course of justice. Mr La Spina made a statement to the police tending to inculpate her. In that statement he made full disclosure of his

¹ Section 13(1).

misconduct in 2005. He gave evidence against her at her committal. He was not required to give evidence at her trial because in the event she pleaded guilty. Details of the sentence imposed upon her are not in evidence.

- [13] Cottell made good her threat in April and May 2009 by lodging complaints against Mr La Spina with the Queensland Law Society and the Legal Services Commission. These proceedings are the outcome of those complaints.
- [14] In his response to the charges Mr La Spina accepted that his conduct in falsely purporting to witness a signature on a statutory declaration amounted to professional misconduct. He has at all times cooperated with the Commissioner and has made full admissions. He has expressed remorse which I find to be genuine. This misconduct is the only stain on his otherwise unblemished record. By the time the charges were brought Mr La Spina was working as a senior legal officer for the Queensland government. As a consequence of the proceedings he was obliged to take other work in the public service.

Disposition of the charges

- [15] There can be no doubt that Mr La Spina's conduct amounted to professional misconduct. It represented a serious breach of the ethical standards required of legal practitioners, as the Commissioner submitted. However it was not done for personal gain or with an improper motive (at the time he feared that Cottell and her children were in danger), and the document was never used. Mr La Spina promptly repented of his actions. He sent Cottell to other solicitors for her litigation. He took steps to ensure that neither Magistrates Court was misled, knowingly exposing himself to the events which have happened. He recognised the impropriety of what he did. These are powerful mitigating factors.
- [16] Even more importantly, Mr La Spina cooperated with the police when Cottell was charged, notwithstanding that this forced him to admit his own misconduct. It is true that his motives for doing so have not been explored, but that is of little consequence. Those who, at significant personal cost, assist in the administration of criminal justice deserve commendation from society. By the same token this Tribunal should be astute to ensure that its processes are not abused by criminals. It should ensure that those processes cannot effectively be used as a tool for blackmail.
- [17] Section 456 of the *Legal Practitioners Act 2007* confers a discretion on the Tribunal to make any order it thinks fit. The section states some of the orders which the Tribunal may make, but the list is not exclusive. The discretion is open and wide ranging. In my judgment it extends not only to deciding what sort of order to make, but also to deciding whether to make any order at all.
- [18] A predominant consideration in exercising the discretion is the public interest. I accept the Commissioner's submission that regard should be had to the protection of the public and the maintenance of proper professional standards. But those are not the only matters of public interest

which can arise. The present case demonstrates that there may be circumstances where the public interest in the deterrence of criminal conduct comes into play.

- [19] This case is exceptional. I am satisfied that there is no need to impose any punishment for the purposes of individual deterrence. Nor is there any need for Mr La Spina to undergo further training or education in order to make him a fit and proper person to practice law. The needs of general deterrence are in this case adequately met by a finding of professional misconduct. There are no client interests to be protected; Mr La Spina has injured only himself. In all circumstances I decline to make any order under s 456.
- [20] The Commissioner sought to rely on three letters which Mr La Spina sent on Cottell's behalf in December 2005. Two of the letters were sent to Mr Griffin and related to administrative arrangements for the latter's access to his daughter, but also contained warnings regarding his behaviour. A third was to Centrelink regarding a complaint made to it by Mr Griffin. The Commissioner characterised sending those letters as inappropriate. Nothing was placed before the Tribunal in support of that submission. I am not satisfied that Mr La Spina acted inappropriately in sending the letters on Cottell's behalf.
- [21] That means that the second charge is supported only by the same conduct as supports the first. There was no submission made that this conduct was insufficient to sustain that charge, nor that in such circumstances the charges were duplicitous. It is unnecessary to consider those questions.

Costs

- [22] The Commissioner has sought an order for costs. Under s 462(1) of the Act the Tribunal must make such an order against Mr La Spina unless satisfied exceptional circumstances exist. I have already found that they do. Having regard to that I have concluded that in the circumstances of this case, no order should be made.