

CITATION: *Legal Services Commissioner v Quinn* [2012] QCAT 618

PARTIES: Legal Services Commissioner
(Applicant)
v
Michael Morrison Quinn
(Respondent)

APPLICATION NUMBER: OCR157-12

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers; the Panel met to consider the matter on 28 November 2012

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
Assisted by:
Mr Ken Horsley
Practitioner Panel Member
Ms Julie Cork
Lay Panel Member

DELIVERED ON: 5 December 2012

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The Respondent's name is to be removed from the roll.**
- 2. The Respondent must pay the Applicant's costs fixed at \$2,000.00 within ninety (90) days of the date of this order.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where Respondent signed or authorised cheques that improperly transferred sum from legal practice trust account to general account – where Respondent had previously been disciplined for separate incident involving misuse of trust funds – where Respondent offered undertaking to never again apply for practicing certificate – where Applicant sought order that Respondent

be removed from roll of practitioners – whether conduct amounts to unsatisfactory professional conduct or professional misconduct – whether acceptance of undertaking constitutes appropriate sanction

Legal Profession Act 2007, ss 9, 31, 418, 419
Legal Profession Regulation 2007, reg 58(3)(a)(ii)
Queensland Civil and Administrative Tribunal Act 2009, s 32
Trust Accounts Act 1973, s 8

Attorney General v Bax [1999] 2 Qd R 9
Law Society of New South Wales v Jones [1978] CA 333 of 1977 (unreported, 27 July 1978)
LSC v Twohill [2005] LPT 001
Queensland Law Society v Mead [1997] QCA 83
Re a Practitioner [1941] SASR 48

APPEARANCES and REPRESENTATION (if any):

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

REASONS FOR DECISION

- [1] Mr Quinn, a solicitor admitted in 1974, has not contested a charge brought by the Commissioner that between January and May 2011 he signed or authorised the signing of cheques which improperly transferred over \$826,000 from his legal practice trust account to its general account.
- [2] These acts breached regulation 58(3)(a)(iii) of the *Legal Profession Regulation 2007*. Under that regulation a law practice may only withdraw trust money if it is, at the time of withdrawal, owed to the practice by way of reimbursement of money already paid by the practice on behalf of the client.
- [3] Mr Quinn has sought only to explain the circumstances surrounding those transactions and to offer what he describes as an unconditional, irrevocable and enforceable undertaking never again to apply for a practicing certificate or to seek employment in any capacity in a legal office or to practice as a solicitor, whether as a principal or employee.
- [4] By agreement each party delivered written submissions to the Tribunal on sanction and the Panel considered them and then met (again, with the concurrence of the parties) to determine the matter on the papers.

- [5] The Commissioner contends that in this case the undertaking should not be accepted and, rather, Mr Quinn's name should be removed from the roll. For the reasons which follow, the Tribunal agrees.
- [6] At the relevant time Mr Quinn was the managing partner of a law practice. In the period from 21 January to 30 May 2011 he signed a number of trust account cheques and authorised the signature by others, at his direction, of further cheques drawn on the practice trust account from funds which had been provided to the firm for the payment of stamp duty on property transfers. The transferred funds were paid into the firm's general account and used to pay operational expenses of the practice. The total amount transferred was \$826,019.50.
- [7] As a result of this misuse of trust funds the practice was not charged interest of \$9,137.00 which would otherwise have been payable on its overdraft account. The improper use of trust funds also resulted in unpaid stamp duty and unpaid penalty tax and interest – which Mr Quinn did, however, ultimately pay himself.
- [8] Mr Quinn has explained his conduct and his motives in submissions to this Tribunal and, previously, in his response to the Commissioner and also in earlier correspondence with the Queensland Law Society. He says that his firm was under 'unrelenting financial pressure' before and during the period of his offending due to cash flow problems. He was, he says, unable to borrow money at the time and was '... trying to maintain jobs for the eighty staff'. He was also, at the time, suffering some personal distress unrelated to his law practice.
- [9] In his written submissions he also asserts that none of his clients suffered loss as a consequence of his actions, and that he brought the matter to the attention of the firm's Trust Account Auditor. Those matters are not in dispute.
- [10] He ceased practice on 30 June 2011 and has not since sought to renew his practicing certificate.
- [11] It has long been recognised that the proper maintenance of trust accounts by lawyers – involving, of course, funds held in trust for clients – is a vitally important aspect of professional legal practice. Queensland Chief Justice Paul de Jersey has described trust account monies as having a 'sacrosanct character'.¹
- [12] As Street CJ observed in *Law Society of New South Wales v Jones*,² reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities attaching to a solicitor. Members of the public, many of them wholly inexperienced and unskilled in matters of business or law, must inevitably put great faith and trust in the honesty of

¹ *LSC v Twohill* [2005] LPT 001 at 4.

² [1978] CA 333 of 1977 (unreported, 27 July 1978).

solicitors and the handling of monies on their behalf. The Court must ensure that this trust is not misplaced.

- [13] As long ago as 1941 Murray CJ observed in *Re a Practitioner*³, in remarks echoed in the phrase used by de Jersey CJ, that trust accounts should be treated as sacred, so that monies paid into them should only be paid out to the persons to whom the money belonged, or as directed.
- [14] The *Legal Profession Act 2007* encapsulates two classes of offending by legal practitioners. These are of different levels of seriousness. The lesser is defined in s 418 as *unsatisfactory professional conduct* – conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence the public is entitled to expect of a reasonably competent lawyer.
- [15] The more serious, *professional misconduct*, is defined in s 419 to include unsatisfactory professional conduct of sufficient seriousness to constitute a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and, conduct that justifies a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [16] The *Legal Profession Act 2007* also identifies a number of *suitability matters* in s 9. Those matters are central to the things to be considered by the Supreme Court in deciding whether or not to admit a person to practice.⁴ Under s 9(1)(j) one of those suitability matters is whether a person has contravened the law about trust money or trust accounts.
- [17] The Tribunal does not hesitate to conclude that Mr Quinn’s conduct falls within the more serious category. That was the conclusion reached by the Chief Justice in *Twohill*,⁵ a case involving six breaches of a similar kind and an amount of \$11,586.25. The offending here is on a much greater scale and of a much more serious kind.
- [18] The Tribunal is reinforced in this conclusion by the fact that Mr Quinn was, in 2001, found guilty of similar professional misconduct by the Solicitors Complaints Tribunal. In that case Mr Quinn had been instrumental in eighteen misappropriations of client trust funds, in a total amount of \$89,245.71. On that previous occasion that Tribunal found his principal motive was the same as, he says, drove him to his misconduct here: to assist his firm’s operating funding requirements.
- [19] That earlier occasion concerned a breach of s 8 of the *Trust Accounts Act 1973* and involved, as here, improper payments from the trust account for the purported reimbursement of outlays which had not, at the time, been incurred.

³ [1941] SASR 48 at 51.

⁴ *Legal Profession Act 2007*, s 31.

⁵ *LSC v Twohill* [2005] LPT 001.

- [20] That provision of the *Trust Accounts Act 1973* is now incorporated in regulation 58, but with an additional element: a statutory process requiring that the client be provided with a request for payment, a bill, and an opportunity to dispute the bill.
- [21] It is inescapable that, in light of the similar charges a decade earlier, Mr Quinn was always fully cognisant of the nature of his misconduct on this occasion, its seriousness, and the consequences. Despite that, he persisted for about three months to improperly transfer funds in over 30 transactions.
- [22] The Tribunal is compelled, in circumstances involving a large amount of trust monies and a number of discrete payments, in the shadow of earlier similar misconduct that had attracted a serious sanction, to conclude that his conduct here involves a substantial failure to maintain reasonable standards of competence and diligence, that he is not a fit and proper person to practice as a legal practitioner, and, hence, that his conduct must be categorised as professional misconduct.
- [23] The appropriate penalty is to be determined with regard, primarily, to the need to protect the public.⁶
- [24] In the earlier case the Tribunal observed, in its decision:

...we do not believe that, subject to the orders we propose, there is any real likelihood of the practitioner re-offending and we feel that the public will be adequately protected by the orders we propose.

Those orders were that Mr Quinn be suspended from practice for six months; pay a penalty of \$15,000.00; undergo medical treatment, and obtain a report; and, not be an authorised signatory to any trust account for two years.

- [25] In the present case the conduct in question involved the improper use of a much greater amount and, of course, a repetition of the conduct for which Mr Quinn had previously been disciplined and which attracted what might reasonably be described as a clear and significant warning.
- [26] The Tribunal takes the view that, in light of these factors, a sanction involving acceptance of Mr Quinn's undertaking does not sufficiently reflect the seriousness of the offending. As the Queensland Court of Appeal observed in *Queensland Law Society v Mead*,⁷ a solicitor who remains on the roll is, in a sense, being publicly held out by the Court as a person to whom a citizen may entrust their business affairs. While acceptance of Mr Quinn's proffered undertaking would have the same immediate practical effect as removing his name from the roll the circumstances surrounding, and the nature and size of, the breaches of a legislative requirement which embodies a fundamental element of the faith

⁶ *Attorney General v Bax* [1999] 2 Qd R 9, 21 per Pincus J.
⁷ [1997] QCA 083, 7.

and trust that citizens ought be able to impart in their lawyers warrants an order plainly effecting formal removal of the right to practice.

- [27] The Commissioner also seeks costs, fixed at \$2,000.00. In his written submissions Mr Quinn agrees to pay those costs and the appropriate order will be made.