

# SUPREME COURT OF QUEENSLAND

CITATION: *Legal Services Commissioner v Richardson (No 2)* [2009] LPT 26

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)  
**AND**  
**IAN GEORGE MARSH RICHARDSON**  
(respondent)

FILE NO/S: 6611 of 2008

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline Action

DELIVERED ON: 11 November 2009

DELIVERED AT: Brisbane

HEARING DATE: 29 July 2009

JUDGE: Atkinson J

PRACITIONER  
PANEL  
MEMBER: Mr P Mullins

LAY PANEL  
MEMBER: Dr M Steinberg

ORDERS:

1. The Tribunal recommends that the respondent's name be removed from the roll of legal practitioners in the State of Queensland, to take effect 14 days from today;
2. The respondent must pay the applicant's costs of the proceedings fixed at \$20,000.
3. The respondent must pay Lynne West compensation in the amount of \$2,242.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent found guilty of two charges of professional misconduct and one charge of unsatisfactory professional conduct – whether respondent is a fit and proper person to practise – whether respondent should be removed from the roll

*Legal Profession Act 2007 (Qld)*, ss 456 2(a), 456 4(b), 464

*A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, cited

*Attorney General v Bax* [1999] 2 Qd R 9, applied  
*Attorney-General v Kehoe* [2001] 2 Qd R 350; (2000) QCA 22, cited  
*Attorney-General & Minister for Justice Qld v Priddle* [2002] QCA 297, cited  
*Law Society of New South Wales v Hansen* (2004) NSWADT 183, cited  
*Legal Services Commissioner v Madden (No. 2)* [2008] QCA 301, cited  
*Myers v Elman* [1940] AC 282, cited  
*New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, applied  
*New South Wales Bar Association v Maddocks* [1988] NSWCA 158, cited  
*Queensland Law Society v Whitman* [2003] QCA 438, cited

COUNSEL: MacSporran A J, SC for applicant  
 Davis P J, SC and Wilson, E for respondent

SOLICITORS: Legal Services Commission for applicant  
 Michael Cooper Lawyer for respondent

- [1] Ian George Marsh Richardson was found guilty before the Tribunal on 16 July 2009 of two charges of professional misconduct and one charge of unsatisfactory professional conduct as particularised on a number of occasions. The Commissioner has applied for an order pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld) (“the 2007 Act”) that he be removed from the roll of legal practitioners. The respondent submitted that the appropriate order in the circumstances was a fine.
- [2] The Tribunal has taken into account that he had references in his favour, has been in practice for a very long period with no previous adverse disciplinary findings and that he has been affected by significant ill health. However, the Tribunal also took into account the serious matter that the charges of professional misconduct involved findings of dishonesty and deceit by the legal practitioner. As Spigelman CJ held in *NSW Bar Association v Cummins* (2001) 52 NSWLR 279 at 284:

[19] “Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interests are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire the privileges associated with a particular status. The legal profession has long required the highest standards of integrity.

[20] There are four interrelated interests involved. Clients must feel secure in confiding their secrets and in trusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the

trust by the judiciary and/or the public in the performance of professional obligations by professional people.”

- [3] The respondent’s behaviour was found to be dishonest and deceitful. That behaviour was set out in full in the reasons previously given<sup>1</sup> and there is no need to repeat it. A finding of professional misconduct does not automatically result in removal from the roll.<sup>2</sup> Further, not every proved act of dishonesty will result in a substantial penalty. In *Attorney General v Bax*,<sup>3</sup> Pincus JA said “... dishonesty, like other forms of misbehaviour, has grades of seriousness.”<sup>4</sup> Counsel for the respondent submitted that the dishonesty of the applicant in charge 1 and 2 was not serious enough to warrant removing the applicant from the roll.
- [4] The Tribunal disagrees. In relation to charge one, the respondent deposed that he obtained his clients’ certificates of title as a prudent, competent and diligent solicitor, when in fact his primary purpose was to use the certificates of title to advance his own interests to the detriment of his clients. He obtained the certificates of title without his clients’ instructions thereby breaching his retainer. Further, he used his powers under the Enduring Power of Attorney dishonestly to obtain the certificates of title thereby breaching his duties under the *Powers of Attorney Act 1998 (Qld)*.<sup>5</sup> The respondent knew that by retaining the certificate of title it would cause difficulties for his clients lodging a mortgage on their property.<sup>6</sup>
- [5] The further findings sought by the practitioner with regard to this charge are not strictly relevant and, if made, some are as likely to be exacerbating as they are to be mitigatory. Any wrong headed beliefs justifying his dishonest behaviour do not put the practitioner in a better light. Rather they would tend to show that he is incompetent as well as dishonest. What matters with regard to the first charge was Mr Richardson acted both improperly and dishonestly in failing to make full disclosure and seek instructions from his clients because he knew that if he did the client would instruct him not do what he proposed to do in furtherance of his own interests against the interests of his client.
- [6] Charge 2 involved repeated acts of deceit and incompetence by the applicant in relation to his client. Counsel for the respondent submitted that all that charge 2 amounted to was that the practitioner, embarrassed by errors made, did not disclose his errors and instead attempted to help the client out of the difficult situation she faced. The Tribunal, however, found that although the respondent initially made an error in not making note of the date of the directions hearing and failing to inform his clients, he then embarked on a course of concealment. He failed to seek instructions from his clients in relation to the directions hearing, failed to inform his clients that a judgment had been entered against them and then made an application to have the judgment set aside without obtaining instructions. The client called the respondent every day between 12 December and 24 December 2006. No one returned her calls. She was then forced to attend a court hearing on 10 January 2007

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<sup>1</sup> *Legal Services Commissioner v Richardson* [2009] LPT 17.

<sup>2</sup> *Myers v Elman* [1940] AC 282 at 318; *A Solicitor v Council of the Law Society of NSW* (2004) 216 CLR 253 at 265.

<sup>3</sup> [1999] 2 Qd R 9.

<sup>4</sup> *Ibid* at 20.

<sup>5</sup> *Legal Services Commissioner v Richardson* at [2009] LPT [61] – [64].

<sup>6</sup> *Legal Services Commissioner v Richardson* [2009] LPT 17 at [50].

without any legal representation.<sup>7</sup> This is serious misbehaviour by a legal practitioner from which the public is entitled to protection.

- [7] The charges of misconduct involve findings of dishonesty and deceitfulness in Mr Richardson's behaviour to his clients. His professional misconduct showed that he was not "a fit and proper person to be entrusted with the important duties and grave responsibilities of solicitor".<sup>8</sup> The Tribunal should declare that Ian George Marsh Richardson was not a fit and proper person to remain on the roll of legal practitioners. The question remains whether or not he continues to be so unfit at the time that that determination was made by the Tribunal.<sup>9</sup>
- [8] Although Mr Richardson professed to have learned from his experiences, he behaved dishonestly and deceitfully to his clients in two unrelated matters. In each matter the offending behaviour was sustained over a period of time. It was not momentary or inadvertent. His repeated failure to comply with requests for information first from the Queensland Law Society and then from the Legal Services Commission portrayed a complete lack of respect for the bodies set up to regulate the legal profession and thereby protect the public and an inability to learn from his experiences.
- [9] When considering the appropriate orders, as the Commissioner submitted regard is to be had primarily to the need to protect the public and reputation of the profession.<sup>10</sup> The public, the judiciary, fellow practitioners and clients cannot have confidence in a practitioner exhibiting such sustained dishonest and deceitful behaviour.
- [10] In determining whether an order of suspension would be more appropriate in the circumstances, the question to be considered is whether the respondent would emerge from a period of suspension with a proper appreciation of his professional responsibilities and the capacity and determination to meet them.<sup>11</sup> The applicant submitted that there was no evidence to support this.
- [11] The Tribunal agrees with the applicant's submissions. The practitioner was not contrite and it did not appear that such behaviour would not be repeated in the future. Further, in relation to some aspects of charge 1, he said in cross-examination that he could not see the conflict of interest situation that he had created. Later he finally conceded that he was not giving undivided fidelity to his clients' interests when he obtained the certificates of title.<sup>12</sup> He is lacking necessary attributes required of a legal practitioner, and there is no indication that, over time, the respondent will learn from his mistakes.<sup>13</sup>

<sup>7</sup> *Legal Services Commission v Richardson* [2009] LPT 17 at [117] to [122].

<sup>8</sup> See *Queensland Law Society v Bax* [1999] 2 Qd R 9 at 12; *Queensland Law Society v Whitman* [2003] QCA 438 at [36]; *Attorney-General & Minister for Justice Qld v Priddle* [2002] QCA 297; and *New South Wales Bar Association v Maddocks* [1988] NSW CA 158.

<sup>9</sup> See *Legal Services Commissioner v Madden (No. 2)* [2008] QCA 301 at [125]; *Law Society of New South Wales v Hansen* (2004) NSWADT 183 at 196.

<sup>10</sup> *Attorney-General v Bax* [1992] 2 Qd R 9 at 22; *QLS v Carberry* [2000] QCA 450 at [38]; *Legal Services Commissioner v Baker* Unreported decision Legal Practice Tribunal dated 13 October 2005; *Legal Services Commission v Podmore* (2006) LPT 005/006.

<sup>11</sup> *Queensland Law Society v Whitman* (2003) QCA 438 at [37].

<sup>12</sup> *Legal Services Commissioner v Richardson* [2009] LPT 17 at [62].

<sup>13</sup> *Attorney-General v Kehoe* (2000) QCA 22 at [28].

- [12] His repeated failure to comply with requests for information and documents required by the Queensland Law Society and the Legal Services Commissioner also shows his incapacity to learn from his errors. He is not a fit and proper person to be a legal practitioner. He was at the time of his misconduct and the Tribunal is satisfied that he remains so. The protection of the public requires his removal from the roll.
- [13] The Tribunal recommends that the name of Ian George Marsh Richardson be removed from the roll of legal practitioners in the State of Queensland.

### **Costs**

- [14] The applicant requested the Tribunal to make a costs order against the respondent under s 426(1) of the 2007 Act. The respondent did not oppose a costs order. The parties agreed that the costs order should be in the sum of \$20,000.

### **Stay**

- [15] The respondent is a sole practitioner. It is in the interests of his clients to stay the operation of the order recommending the removal of his name from the roll of practitioners for 14 days to allow an orderly transition of the clients of his practice to other legal practitioners. The Tribunal is prepared to grant such a stay in the interests of his clients.

### **Compensation of the Complainant**

- [16] Mrs West, the complainant in relation to charge 2, asked that the Tribunal make a compensation order in her favour. The Tribunal has the power to make a compensation order under s 456(4)(b) of the 2007 Act. Relevant to these proceedings is s 464(d) of the 2007 Act which provides:

- “s 464 A *compensation order* is 1 or more of the following—
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss suffered because of conduct that has been found to be—
- (i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or
- (ii) misconduct of a law practice employee in relation to the relevant practice.”

- [17] Section 465(1) of the 2007 Act provides that unless the parties agree, a compensation order under s 464(d) for pecuniary loss must not be made unless the Tribunal is satisfied that:

“(a) if there is a complainant in relation to the discipline application—that the complainant has suffered pecuniary loss because of the conduct concerned; and

(b) that it is in the interests of justice that an order of that type be made.”

- [18] The circumstances of the charge proved are set out in *Legal Services Commissioner v Richardson* [2009] LPT 17 at paragraphs [67] to [123]. The Tribunal found that

the respondent's behaviour was deceitful rather than just incompetent, and that it constituted professional misconduct.<sup>14</sup>

[19] In an email sent to the respondent's solicitor on 27 July 2009, the complainant particularised her claim for compensation as follows:

a)	Judgment made against her in the Magistrates Court	\$7,315
b)	Legal fees & interest charged	\$1,579.95
c)	filing fee	\$160.40
d)	service fee	\$32.00
e)	Costs awarded against her of the application to set aside the judgment	\$310.00
f)	Interest charged on the judgment	\$159.65

**Total: \$9,557.00**

[20] The complainant conceded that the maximum amount she was entitled to claim under s 466(3) of the 2007 Act was \$7,500. She therefore sought \$7,500 in compensation from the respondent.

[21] Clearly, the respondent is liable to pay compensation to the complainant for (e) and (f) above because the respondent took it upon himself to make an application to set aside the judgement, which consequently failed, without obtaining instructions from the complainant. The difficulty is in determining the quantum of compensation owed, if any, in relation to steps taken prior to this.

[22] Counsel for the respondent submitted that the respondent's liability to pay compensation was in fact limited to (e) and (f) above: the costs of the dismissed application to set aside the judgement and the interest charged in relation to that. The reasons, they said, were that:

- (a) the respondent was engaged after the contract had been signed, and so if the complainant contracted to sell the pool heater with the house, that was the fault of the complainant rather than the respondent;
- (b) Mrs West made a conscious decision to retain the pool heater after becoming aware that the plaintiffs had contracted to purchase it.<sup>15</sup>
- (c) The complainant cannot prove that she could have successfully defended the action as her defence is based on an affidavit from the real estate agent which was never produced.

[23] It does appear that the solicitors were engaged after the contract was signed. However the advice apparently given to the Wests that the pool heater was "a chattel to go to the purchaser" was not a statement one would expect from a competent solicitor. A chattel is not sold with real property unless it is specifically listed in the contract or if it is no longer a chattel and had become a fixture. It does appear likely that the pool heater was a fixture and was therefore sold as part of the real property; but the Wests were not given this advice before settlement and the respondent's firm did not sort the problem out before settlement as requested by Mrs West. If they had, the Wests would have had to reinstall the pool heater they had removed or compensate the purchasers for the cost of replacing the pool heater

<sup>14</sup> *Legal Services Commissioner v Richardson* [2009] LPT 17 at [123].

<sup>15</sup> At [93].

unless they could demonstrate that the purchasers had specifically agreed to purchase the property without the pool heater.

- [24] Given that it appears more likely than not that the Wests could not have successfully defended the claim against them as the pool heater was a fixture, the respondent was not the cause of the loss to the Wests represented by the cost of compensating the purchasers for the cost of replacing the pool heater. If Mr Richardson (or his staff) had clearly informed the Wests of that prior to settlement that would have been the extent of the Wests' loss.
- [25] However, a judgment was entered against the Wests after the respondent failed to advise them of the directions conference on 3 October 2006, and the requirement that they and legal representatives attend; the respondent sent an inexperienced solicitor to attend the directions conference and seek an adjournment without obtaining instructions from the Wests and without contacting the solicitor to advise her the adjournment would be opposed; and the solicitor arrived half an hour late to the directions conference after getting lost, by which time judgement had already been made against the complainant. The awarding of costs on that occasion arose because the respondent failed to ensure that the interests of the Wests were properly represented. It is no defence to say that he was not charging the Wests.
- [26] All of the costs involved in this court case apart from the quantum of the claim were caused by the respondent's deception and he should compensate Mrs West \$2,242 for those various costs and expenses ordered against them.

### **Orders**

- [27] In conclusion, the orders are as follows:
1. The Tribunal recommends that the respondent's name be removed from the local roll, to take effect 14 days from today;
  2. The respondent must pay the applicant's costs of the proceedings fixed at \$20,000.
  3. The respondent must pay Mrs West compensation in the amount of \$2,242.