

CITATION: *Legal Services Commissioner v Rider-Bell*
[2013] QCAT 176

PARTIES: Legal Services Commissioner
(Applicant)
v
Denise Rider-Bell
(Respondent)

APPLICATION NUMBER: OCR154-11

MATTER TYPE: Occupational regulation matters

HEARING DATE: 11 March 2013

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**

Assisted by:

Mr Matthew Woods
Practitioner Panel Member

and

Ms Kathleen Keating
Lay Panel Member

DELIVERED ON: 16 April 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The respondent's name is to be removed from the local roll.**
- 2. The respondent is to pay the applicant's costs, fixed in the amount of \$8,000.00, within 90 days of this order.**
- 3. The respondent is to pay Ralph Lance Binks compensation in the sum of \$7,500.00, within 90 days of this order.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – where the applicant charged the

respondent with dishonestly obtaining professional fees and outlays from a client – where the client was elderly, unwell and in prison – where the respondent failed to attend the hearing but denied all wrongdoing – where the respondent’s conduct amounts to professional misconduct – whether the nature of the offences warrant a finding that the respondent’s name be removed from the local roll

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – COMPENSATION ORDER – where the respondent’s client is seeking a compensation order – where the offending conduct occurred when the respondent was employed as a consultant at a law firm and also when she conducted a legal practice on her own account – whether the respondent’s client suffered a pecuniary loss – whether a compensation order would be in the interests of justice – whether the respondent’s legal practice is within the meaning of ‘law practice’ in Schedule 2 of the *Legal Profession Act 2007*

Legal Profession Act 2007, s 9(1)(j), s 419(1)(b), s 456(2)(a), s 464, s 466(3), Schedule 2
Trust Accounts Act 1973, s 8

Council of the Law Society v Wakeling [2004] QCA 42, cited
Legal Services Commissioner v Jiear [2012] QCAT 221, cited
Legal Services Commission v Kellahan [2012] QCAT 263, cited

APPEARANCES and REPRESENTATION (if any):

APPLICANT: David Kent of Counsel for the Legal Services Commissioner

RESPONDENT: No appearance by, or for, Ms Denise Rider-Bell

REASONS FOR DECISION

- [1] Ms Rider-Bell was practising as a solicitor on the Gold Coast in 2005, initially as a consultant employed by a firm there. Later, she practised on her own account. In both capacities she acted in 2005/06 on behalf of Mr Ralph Binks in relation to his criminal and matrimonial matters. The Commissioner has brought five charges against her, all arising out of her conduct during those matters.
- [2] The first concerns an invoice she sent Mr Binks (who was then in prison, on remand) in October 2005 for fees and outlays which included charges for visits to the watch house and the Arthur Gorrie Correctional Centre in July and August 2005. Evidence obtained by the Commissioner gave rise to an allegation that neither visit – either on 29 July 2005, for which a fee of \$966.00 was charged, or 17 August 2005 for which \$900.00 was charged – occurred. Records from the Centre, relied on by the Commissioner, show that Ms Rider-Bell only attended upon Binks once, on 2 August 2005. The Commissioner alleges an over charge of \$1,866.00.
- [3] The second charge arose from a later invoice sent to an accountant acting as Mr Binks' attorney in which Ms Rider-Bell claimed fees and outlays of \$88,035.00 for work on Mr Binks' criminal and family matters. The attorney paid the invoice. It included a claim for over 40 visits by Ms Rider-Bell to Mr Binks in prison between 2 November 2005 and 27 September 2006. The fee shown for these visits was \$31,890.00.
- [4] Prison records show (and Mr Binks also swears) that during this period Ms Rider-Bell only visited him, however, on eight occasions. There are, the Commissioner claims, 36 charges for visits which did not occur.
- [5] The third charge concerns an entry in an invoice from Ms Rider-Bell to the accountant in which she claimed \$4,000.00 as a reimbursement for a payment or loan made by her, she asserted in the invoice, to Mr Binks by way of funds placed in his prison account. Mr Binks denies this, and no deposit of \$4,000.00 appears in his prison trust account statement.
- [6] The fourth charge also concerns Ms Rider-Bell's invoice to the accountant in which there is a representation that she was owed \$450.00 which she had paid, at Mr Binks direction, to two of his fellow inmates. The evidence shows, however, that the two prisoners only received \$100.00 each and the Commissioner asserts a wrongful benefit to Ms Rider-Bell of \$250.00.
- [7] The fifth and final charge, again, relates to the invoice. In it Ms Rider-Bell asserts that included in her fees is an amount of \$3,200.00 payable to the accountant himself. There is no evidence that such a fee was charged or owing. The accountant had claimed fees in a slightly lesser amount, for which he had been reimbursed by another law firm.
- [8] Ms Rider-Bell did not appear at the final hearing of this matter before the Tribunal on 11 March 2013. She has never filed a Response, nor provided

an address for service. An order for substituted service at a mailing address known to the Commissioner and, also, an email address from which she had been communicating with the Commissioner (and, from time to time, this Tribunal) was made on 19 December 2011. A compulsory conference was held before a QCAT Senior Member on 5 April 2012. Ms Rider-Bell did not attend. The Senior Member then issued directions requiring her to file a response by 4:00 pm on 3 May 2012. She did not do so. The learned Senior Member also directed an exchange of written submissions. Ms Rider-Bell did not comply.

- [9] She had, however, earlier sent documents to the Tribunal. The first, a lengthy document, was addressed to the President of QCAT and his Associate and marked '*Private and Strictly Confidential*'. Ms Rider-Bell was informed that those documents could only be received if she consented to them also being disclosed to the Commissioner. She did so, and they were.
- [10] In that document Ms Rider-Bell described serious health problems she says she has suffered since March 2006; personal attacks including physical assaults against her which, she says, were related to Mr Binks' matter, and a need for her to flee overseas for her own safety; and, a series of personal mishaps including damage to her home, computer, files and records.
- [11] These matters are not raised in the document, however, in a manner suggesting they are intended to either answer or defend the Commissioner's allegations of misconduct; or, to explain her failure to formally respond to the discipline charges here or her non-appearances in these disciplinary proceedings.
- [12] Ms Rider-Bell also sent the Tribunal (not by way of any formal response to the Commissioner's Discipline Application, or consequent upon any Tribunal orders) two documents dated in late January 2010, one called '*Summary of Submissions in relation to Conduct Issues*' and the other '*Final Submissions to the Chairman of the Legal Services Commission*'.
- [13] Both contain strenuous denials of any wrongdoing, and assertions that Mr Binks was not overcharged, and that all claimed visits to the prison actually occurred.
- [14] In the course of these submissions Ms Rider-Bell says that her own records of the visits to the correctional centre have vanished, or been damaged; that the number of visits she is alleged to have made (based upon her invoices) has been inflated by the Commissioner, and is not a true reflection of her invoices to Mr Binks; that errors in the disbursement of funds held for Mr Binks were '*... caused by another person*' (who is not, however, named); that all copies of Ms Rider-Bell's original invoices to Mr Binks were destroyed when a car drove into her home; and, that copies of invoices she originally gave to the Commissioner were only '*... draft copies that I had on file*'.

- [15] Later, she sent the Tribunal a report from a psychologist on the Gold Coast, who asserts that the Commissioner's charges are without substance, and that Ms Rider-Bell is an honest person.
- [16] The unchallenged affidavit evidence filed on behalf of the Commissioner shows that her invoices contain a total of over 40 alleged visits to Mr Binks at the Correctional Centre between 2 November 2005 and 27 September 2006 but the Centre's own records, and statements obtained from persons who were said to have attended on the occasion of some of these visits with Ms Rider-Bell, establish only eight visits.
- [17] Mr Michael Kearney, an investigator employed by the Queensland Law Society, calculated from Ms Rider-Bell's own invoices that the total number of visits to the correctional centre claimed in all of them (for both criminal and family law matters) was 41. Enquiries with Queensland Corrective Services initially revealed that records at the Arthur Gorrie Correctional Centre showed only one visit on 2 August 2005 in the period between June 2005, and December 2006. When, however, a freedom of information application was made by the Society to Queensland Corrective Services hand written registers of attendance records at the Corrections Centre were supplied, showing eight visits. This accords with Mr Binks own recollection of between five and ten visits.
- [18] The records, and this evidence, are persuasive that this is the correct figure and that the numerous other visits charged for did not, in truth, occur. It may also be observed that, in light of the nature of the legal matters confronting Mr Binks and the need to take instructions from him, such a large number of visits would have been surprising, and inexplicable.
- [19] No witness statements, affidavits, or documents in support of her contentions have been received from Ms Rider-Bell. Nor has she produced any file or diary notes or, indeed, any documents to suggest the official record is wrong.
- [20] Against that, the affidavits in support of the discipline application sworn and filed by Mr Robert Brittan, and Mr Kearney, contain persuasive and un rebutted evidence proving, to the requisite degree, each of the particulars of the five charges contained in the discipline application.
- [21] Those matters demonstrate a deliberate, extended and serious course of conduct involving dishonestly overcharging (and wrongly charging, and accounting to) Mr Binks – who was, of course, suffering the disadvantage of being a prison inmate.
- [22] The overcharging also has special and serious elements, from which it is not unreasonable to infer something close to opportunistic preying upon Mr Binks who was (as Ms Rider-Bell agrees) also elderly and unwell: her fee invoice for \$88,035.00 followed closely, it appears, upon the receipt by Mr Binks' attorney of funds sufficient to pay this invoice.

- [23] The extent of overcharging, and the misappropriation of monies, compels the conclusion that all five charges should be categorised as *professional misconduct* under the *Legal Profession Act 2007* ('LPA'). Under s 419(1)(b) professional misconduct includes conduct which would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [24] Deliberate dishonesty in relation to client funds, as here, warrants that finding.¹ It is also a contravention of a law about trust money² and that is a '*suitability matter*' as defined in s 9(1)(j) of the LPA.
- [25] The combination of overcharging, or incorrect charging (counts one, two and five) amounts to over \$30,000.00. The wrongful claims for alleged disbursements in counts three and four amount to \$4,250.00.
- [26] The Commissioner contends that the serious nature of the offending warrants an order that Ms Rider-Bell's name be removed from the roll of legal practitioners.³
- [27] Charges one and two may be described, without exaggeration or unfairness, as an attempt to batten upon the misfortune of an incarcerated person through a grossly exaggerated claim for professional work. While the other counts involve significantly lesser sums, each occurred in the same matter and each involved a dishonest transaction bringing benefit to Ms Rider-Bell to which she had no entitlement.
- [28] The LPA defines *professional misconduct* as conduct happening in connection with the practice of law that would, if established, justify a finding that the person is not a fit and proper person to engage in legal practice. It also incorporates the proposition that the lesser count, *unsatisfactory professional conduct*, may attain a degree of seriousness indicating a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence. So far as counts three, four and five are concerned even if Ms Rider-Bell could be said to have made inadvertent errors in her accounting, rather than deliberate non- or under-payments this is a case in which, in concert with the overcharging in counts one and two, those failures can fairly be categorised as substantially falling short of reasonable standards of competence and diligence.
- [29] Further, in all instances the defalcations may also be categorised as a dishonest misappropriation of client's money which would, for the reasons advanced earlier, amount to professional misconduct.
- [30] The Tribunal is satisfied that Ms Rider-Bell must be found guilty of professional misconduct on all five charges. The serious nature of the misconduct, the extent of overcharging, and the circumstances in which

¹ *Council of the Law Society v Wakeling* [2004] QCA 42.

² *Trust Accounts Act 1973* (Qld) s 8.

³ LPA, s 456(2)(a).

the offences occurred warrant a finding that her name should be removed from the roll of legal practitioners.

- [31] The Commissioner seeks costs, in the sum of \$8,000.00. Ms Rider-Bell has not made any submissions in that respect. The detailed and lengthy investigations in the matter and the work associated with it (compounded, it must be observed, by changes in Ms Rider-Bell's responses during the investigative exercise) and the large amount of material tendered by the Commissioner suggests the costs are reasonable. It will, then, also be ordered that Ms Rider-Bell pay the Commissioner's costs fixed at the sum of \$8,000.00, within 90 days.
- [32] Finally, Mr Binks seeks compensation under Part 4.10 of the LPA. Section 464 defines a *compensation order* to include an order that a 'law practice' pay an amount by way of compensation for pecuniary loss suffered by a complainant because of misconduct, here, professional misconduct on the part of an Australian legal practitioner '*involved in the relevant practice*'.
- [33] Mr Binks gave notice of his intention to seek an order of that kind in 2012 on the basis that he was overcharged \$26,000.00. He also claims interest.
- [34] The particulars in charge one include an allegation which is consistent with the evidence that, at the time of the initial overcharging of \$1,866.00 Ms Rider-Bell was employed as a consultant by a firm of solicitors. For the reasons identified in *Legal Services Commissioner v Jiear*⁴ Ms Rider-Bell was not, arguably, a 'law practice' within the meaning of Part 4.10.
- [35] The particulars in charges two - five all include, however, an allegation that at the material time of the offending set out in them Ms Rider-Bell was conducting a legal practice on her own account, or behalf – and, again, that is consistent with the evidence. She practised, alone, on her own account and therefore, at the material time, fell within the definition of '*law practice*' in Schedule 2 of the LPA.
- [36] An order maybe made if the Tribunal is satisfied that the complainant has suffered pecuniary loss because of the conduct, and that it is in the interests of justice that an order be made. For the reasons already set out, the Tribunal is persuaded that an order is appropriate. Under s 466(3), however, an order cannot be made in excess of \$7,500.00 unless both the complainant and the law practice consent.⁵ Ms Rider-Bell has not, on any view, consented. In the circumstances an order will be made that she pay compensation of \$7,500.00 to Mr Binks within 90 days.
- [37] The Tribunal notes Mr Binks has only made a compensation order against Ms Rider-Bell. It may be open to him to also apply for compensation from the law practice in which Ms Rider-Bell was a consultant at the times referred to in charge one.

⁴ [2012] QCAT 221.

⁵ See e.g. *Legal Services Commission v Kellahan* [2012] QCAT 263.