

**CITATION:** *Legal Services Commissioner v Rowlands*  
[2010] QCAT 154

**PARTIES:** Legal Services Commissioner  
(Applicant)  
v  
Peter Nicholas Arthur Rowlands  
(Respondent)

**APPLICATION NUMBER:** LPD 001-06 / LPD004-09

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 4 November 2010

**HEARD AT:** Brisbane

**DECISION OF:** Justice Alan Wilson, President  
Assisted by:  
Mr K Horsley (Practitioner Member)  
Ms Julie Cork (Lay Member)

**DELIVERED ON:** 6 April 2011

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1 That the name of the respondent be removed from the local roll;**
- 2 That the respondent pay the applicant's costs of and incidental to the discipline applications, assessed on the Supreme Court scales of costs and fees and on the standard basis;**
- 3 That the respondent pay the sum of \$7,500 by way of compensation under the *Legal Profession Act 2007* to Denene Cashin; and,**
- 4 That the respondent pay the sum of \$6,922.50 by way of compensation under the *Legal Profession Act 2007* to William Byers and Charmain Byers.**

**CATCHWORDS :** PROFESSIONS AND TRADES – LAWYERS  
– COMPLAINTS AND DISCIPLINE –  
DISCIPLINARY PROCEEDINGS –  
UNSATISFACTORY PROFESSIONAL  
CONDUCT OR PROFESSIONAL  
MISCONDUCT – where the respondent was  
charged with six charges in 2006 including:  
failing to give a client proper Trust receipt

forms for money received on account of costs and outlays – failing to comply with requests by the Queensland Law Society – breaching his duty by being guilty of neglect and delay – failing to render an itemised bill of costs and delivering up the client’s file, documents and trust monies – making false and misleading representations – failing to comply with a notice to provide certain documents to the Queensland Law Society – whether the respondent’s conduct amounted to unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the respondent was charged with six charges in 2009 including: failing to maintain reasonable standards of competence or diligence, failing to comply with a notice delivered by the Legal Services Commissioner, and failing to comply with a notice from the Queensland Law Society – whether the respondent’s conduct amounted to professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – COMPENSATION ORDER – where two complainants seek compensation orders – where respondent is no longer practising as an Australian legal practitioner – whether it is possible to award compensation where the respondent is a former Australian legal practitioner – whether it is appropriate to award compensation

*Legal Profession Act 2007*, ss 417, 456, 464  
*Queensland Law Society Act 1952*

*Attorney-General v Bax* [1999] 2 Qd R 9, cited  
*Law Society of New South Wales v Fernie* [2006] NSWADT 123, cited  
*Legal Services Commissioner v Browne* [2004] NSWADT 63, cited  
*Legal Services Commission v Podmore* [2006] LPT 005/006, cited

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT :** Ms T Thomson instructed by the Legal Services Commissioner

**RESPONDENT:** No appearance

**REASONS FOR DECISION**

- [1] Two discipline applications have been brought against Mr Rowlands, who was admitted as a solicitor in Queensland in 1991 but became bankrupt in 2008 and ceased to be an Australian Legal Practitioner.
- [2] The first application, filed in 2006, involves six charges and the second, brought in 2009, another six. Although Mr Rowlands filed an address for service in the former Legal Practice Tribunal (when these proceedings were still in the Supreme Court) he has never appeared in QCAT since this Tribunal took the matter over after 1 December 2009, and he did not appear at a final hearing on 4 November 2010.
- [3] The first of the 2006 charges alleges that he failed to give a client proper Trust receipt forms for money received on account of costs and outlays in 1999, and 2000. The second charge is that he failed to comply with a legitimate requirement of the Queensland Law Society to provide an explanation, in writing, of a matter the society was investigating.
- [4] The third is that between 2001 and 2004 he breached his duty as a solicitor in his conduct in an estate matter involving the late Olive Georgina Raetz and, in particular, was guilty of serious neglect or undue delay in his finalisation of the administration of the estate. The fourth charge is that he failed to render an itemised bill of costs in that estate matter to his clients William and Charmain Byers, or to deliver up his client file and documents and trust monies when asked to do so.
- [5] The fifth charge is that in early March 2005 he made false or misleading representations to a solicitor and to an investigator employed by the Queensland Law Society to the effect that a cost assessment of a client file was being conducted by a legal cost assessor, when he knew that was not so. The sixth is that he failed to comply with a notice which, under the relevant legislation, required him to provide certain documents to the Law Society.
- [6] The first of the 2009 charges alleges a failure to maintain reasonable standards of competence or diligence in his conduct of a property settlement matter for a client, Ms Cashin. The second is that he, again, failed to comply with a notice delivered, this time, by the Legal Services Commissioner. The third is that he failed to maintain reasonable standards of competence or diligence in a conveyance, in April 2007, for his client Xi Kai Guo. The fourth of the charges in 2009 is that he again failed to comply with a notice from the Queensland Law Society, and the fifth and sixth are to similar effect.
- [7] An initial question concerns the appropriate tests to be applied to Mr Rowlands' conduct where it occurred before the commencement of the

current prevailing legislation, the *Legal Profession Act 2007* and, indeed, when some of it occurred before its predecessor, the *Legal Profession Act 2004*, was promulgated.

- [8] The inter-relationship between the different pieces of legislation is also material when it is necessary to decide whether Mr Rowlands' conduct, in each particular charge, should be categorised as *unsatisfactory professional conduct* or *professional misconduct*. Those terms are defined in ss 418 and 419 of the 2007 Act but are, also, separately referred to in Schedule 2 to that Act, which provides that unsatisfactory professional conduct or professional misconduct alleged to have occurred before 1 July 2004 will be determined by reference to the 2007 Act.
- [9] Under s 423(1) of the 2007 Act, that Act is deemed to apply to conduct which occurred before or after the commencement of the section.
- [10] Hence although the first three charges in the 2009 application occurred before the commencement of the 2007 Act, they are to be characterised by reference to the definitions in that Act because they occurred after the commencement of the 2004 Act. The same applies to charges two, four, five and six in the 2006 application. However, for charges one and three in that application, which occurred before the commencement of the 2004 Act, Mr Rowland's conduct is to be assessed by reference to the notions of professional misconduct and unprofessional conduct or practice which applied under the *Queensland Law Society Act 1952*.
- [11] The Tribunal was ably assisted by Ms Thomson, representing the Commissioner, who provided extensive written submissions. The Tribunal is satisfied, on the basis of uncontested evidence contained in affidavits from the various complainants (Mr Rowlands' former clients) and the Commissioner's staff, and Ms Thomson's submissions, that:
- a) Charges one and three in the 2006 application are properly categorised as instances of unprofessional conduct or practice, within the meaning of that term as it is used in the *Queensland Law Society Act 1952*.
  - b) The circumstances described in charge two of 2006 constitute professional misconduct, according to the definition in the 2007 Act; as, also, does the conduct described in charges four, five and six in that 2006 application.
- [12] In particular, the Tribunal is satisfied that the practitioner's dealings with Mr and Mrs Byers manifest a consistent failure to reach or maintain a reasonable standard of competence and diligence; and, that the facts and circumstances arising in charge five involved aggravating factors in that the respondent not only failed to act competently and diligently, he also attempted to cover up that failure, and put his own interests ahead of those of his former clients.
- [13] As to the 2009 charges the Tribunal is satisfied that:

- a) Counts one, two, four, and six properly attract a finding of professional misconduct within the definition of that term in the 2007 Act;
- b) The respondent's failure to attend at the settlement of the conveyance in which he was instructed by Mr Guo involved a substantial failure to reach or maintain a reasonable standard of diligence, and is also properly categorised as professional misconduct, rather than falling within the lesser category of unsatisfactory professional conduct;
- c) As to count six, the Tribunal is satisfied that the notice sent to the respondent by the Law Society came to his attention, and his failure to respond and meet his requirements under the legislation is, again, properly described as professional misconduct.

[14] Mr Rowlands faces a total of twelve charges. Four of them related to his competence and diligence as a practising lawyer. Seven involved a failure to respond to communications from the Law Society and the Commissioner, and one a charge of making a misleading statement or representation to the Law Society. They cover a period of nine years.

[15] Mr Rowlands also failed to comply in a timely manner with respect to six separate investigations. That in itself is a very serious matter.<sup>1</sup>

[16] His conduct in respect of charge five in the 2006 application involved a dishonest and deceitful attempt to justify an unreasonable delay to his former clients' new solicitors and, also, a dishonest statement to an investigator from the Law Society.

[17] Mr Rowlands has engaged, consistently and over an extended period, in conduct which falls far short of, or offends, important tenets of good professional practice as a lawyer. The events surrounding each charge cannot be described as isolated incidents. There is nothing to suggest remorse on his part, or any recognition of the seriousness of his conduct. Rather he has, in recent years at least, simply failed to acknowledge or respond to disciplinary proceedings or communications about them.

[18] When considering the appropriate orders regard will be had, primarily, to the need to protect the public, and to the reputation of the legal profession.<sup>2</sup> The practitioner's repeated departures from the standards required of Australian lawyers are serious and fundamental. The inevitable conclusion is that he is not a fit and proper person to be a legal practitioner. The appropriate order is that his name be removed from the local roll. No lesser penalty would satisfy the statutory exhortations to protect the public, and the reputation of the profession.

[19] The Commissioner also seeks costs. Under s 462(1) of the 2007 Act this Tribunal must make an order directing the payment of costs unless it is satisfied that some exceptional circumstances exist. Nothing of that kind appears to arise here. The appropriate order is that the respondent pay the

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<sup>1</sup> *Legal Services Commissioner v Browne* [2004] NSWADT 63; *Law Society of New South Wales v Fernie* [2006] NSWADT 123.

<sup>2</sup> *Attorney-General v Bax* [1999] 2 Qd R 9 at 22; *Legal Services Commission v Podmore* [2006] LPT 005/006.

applicant's costs incidental to both proceedings, to be assessed on the Supreme Court scale on the standard basis.

- [20] Two of Mr Rowlands' former clients sought compensation orders – a term defined in s 464 to mean 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 unsatisfactory professional conduct, or professional misconduct. The power to make an order of this kind is found in s 456.
- [21] Mr and Mrs Byers sought compensation in respect of charges three and four under the 2006 application, and Ms Cashin with respect to charge one in the 2009 application. Both filed documentary evidence in support of their claims. A compensation order cannot, under s 466(3), exceed \$7,500 unless both parties consent. Mr Rowlands has not consented, so no occasion has arisen for the claimants to exercise their right to do so.
- [22] At the conclusion of the hearing the Tribunal invited further submissions from Ms Thomson about the claims for compensation, in light of the fact that the respondent had become bankrupt in 4 April 2008 and, at that time, ceased to be an Australian legal practitioner as that term is defined in the 2007 Act and to conduct, of course, a 'law practice' (the term used in s 464).
- [23] Sections 456 and 464 are in Chapter 4 of the 2007 Act which, in one of its very early provisions (s 417) specifically provides that the Chapter applies to Australian lawyers and '*former Australian lawyers in relation to conduct happening while they were Australian lawyers ...*' (s 417(1)); and, also, to '*former Australian legal practitioners in relation to conduct happening while they were Australian legal practitioners ...*' (s 417(2)). For the purpose of the last mentioned provision the term *former Australian legal practitioner* is defined to include a person who was a solicitor or barrister in the jurisdiction before 1 July 2004.
- [24] Under s 464(d) a compensation order can be made against a '*law practice*'. That term is defined in Schedule 2 to include an *Australian legal practitioner who is a sole practitioner* – which, the evidence establishes, was the nature of Mr Rowlands' practice. As just observed, that is a term whose meaning is extended to include former Australian legal practitioners under s 417(2).
- [25] This analysis indicates that compensation orders can be made against Mr Rowlands notwithstanding that he is no longer conducts a 'law practice'.
- [26] Ms Cashin's claim arises out of Mr Rowlands' failure to obtain a refund of stamp duty paid on a transfer of real property affected in the course of a matrimonial property settlement. Because the transfer was effected before a family court order was made the stamp duty actually paid (\$6,500) was never refunded when, had the practitioner maintained reasonable standards of competence and diligence, obtaining a refund should have been relatively straightforward. The initial loss of \$6,500 was sustained in late 2005/early 2006. Ms Cashin has claimed that loss, plus interest in each ensuing year at 5%, which would now take her total claim to over \$7,500. In the circumstances it is appropriate to award her the maximum available compensation, in that sum.

- [27] The other claim is by Mr and Mrs Byers, who were the executors of the estate of Mrs Raetz. They suffered at the hands of the practitioner through his delay in administering the estate including, in particular, a delay in accounting for the proceeds of sale of real estate. The settlement of the sale was on 29 October 2004 but, for no apparent reason, proceeds of sale were not accounted for to the executors for over six months.
- [28] Mr and Mrs Byers have been able to show that, at the time, estate funds would have earned 5.75%. The Tribunal is satisfied that they have suffered pecuniary loss calculated at 5.75% on \$206,000 for 6 months, that is \$5,922.50. They have also, of course, lost the benefit of those funds between mid 2005 and the present date and it is appropriate to add an amount of \$1,000 for lost interest in that period, and to award them compensation of \$6,922.50.