

CITATION: *Legal Services Commissioner v Scheiwe* [2016] QCAT 414

PARTIES: Legal Services Commissioner
(Applicant)
v
Paula Elizabeth Scheiwe
(Respondent)

APPLICATION NUMBER: OCR017-14

MATTER TYPE: Occupational Regulation Matter

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**
Assisted by:
Ms Megan Mahon, Legal panel member
Dr Margaret Steinberg, Lay panel member

DELIVERED ON: 31 October 2016

DELIVERED AT: Brisbane

ORDERS MADE: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

- 1. The publication of the psychiatric reports and/or any information in relation to the discipline application which would disclose details of Ms Scheiwe's mental health condition is prohibited.**
- 2. Ms Scheiwe is to be publicly reprimanded.**
- 3. Ms Scheiwe is to pay the Legal Services Commissioner a pecuniary penalty of \$2,000.00 within 6 months of the date of this order.**
- 4. The following conditions are placed on any future practising certificate issued to Ms Scheiwe:**

- (i) Ms Scheiwe may only be granted an employee-level practising certificate;**
- (ii) Ms Scheiwe must obtain and provide to the Queensland Law Society a report from her employer detailing established supervision arrangements within four weeks of recommencing employment as a legal practitioner;**
- (iii) Ms Scheiwe is subject to the following conditions for as long as she continues practising:**
 - (a) Ms Scheiwe must consult with her psychiatrist monthly for the first 12 months, and then at a frequency to be determined by the treating psychiatrist.**
 - (b) Ms Scheiwe must cooperate with the taking, or administering, of medication as prescribed by the treating psychiatrist.**
 - (c) Ms Scheiwe's medication blood levels should be monitored by the treating psychiatrist whenever this is possible and meaningful at an interval of at least every 3-6 months or more frequently if clinically indicated.**
 - (d) Ms Scheiwe must provide consent for the Queensland Law Society to write to her treating psychiatrist and general practitioner to enquire into her treatment responsiveness and the**

progress of any treatment and for such medical practitioners to provide a written response to the enquiries.

- (e) Ms Scheiwe must consent to her treating psychiatrist and to her treating general practitioner providing the Queensland Law Society with short reports advising of any significant change in her mental state or treatment and details of her alcohol intake, monthly for the first 12 months and then as appropriate.
- (f) Ms Scheiwe must provide to the Queensland Law Society copies of any reports provided to the Mental Health Review Tribunal and/or Mental Health Court about her condition.
- (g) Ms Scheiwe must inform the Queensland Law Society of any admissions to any mental health facility as soon as possible after admission.
- (h) Ms Scheiwe must inform the Queensland Law Society if she should come to the attention of the police, even if such attention does not result in criminal charges.
- (i) Ms Scheiwe must inform the Queensland Law Society if she becomes

subject to any legal action.

(j) The Queensland Law Society determine the appropriate sanction should Ms Scheiwe fail to adhere to any conditions placed upon the maintenance of her practising certificate, which may include the cancelling or suspension of the practising certificate.

(iv) For the first 12 months of any return to legal practice, Ms Scheiwe be supervised by a solicitor approved by the Tribunal or by the Queensland Law Society.

5. Ms Scheiwe pay the Legal Services Commissioner's costs to be assessed, payable within 12 months of the assessment.

CATCHWORDS:

PROFESSIONS AND TRADES – LEGAL PRACTITIONERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where the applicant charged the respondent with various disciplinary charges including breaches of the trust accounting provisions of the *Legal Profession Act 2007* (Qld) – where there are no longer any matters in dispute – where the practitioner consents to the proposed conditions being imposed on her practising certificate – whether the conduct amounts to professional misconduct or unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PUBLICATION OF INFORMATION – where both parties agree certain information about the respondent should not be published

Legal Profession Act 2007 (Qld) s 418, 419, 452, 456, 656D

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32

Adamson v Queensland Law Society [1990] 1 Qd R 498

Attorney-General v Bax [1999] 2 Qd R 9

Legal Services Commissioner v Turley [2008] LPT 4

Queensland Law Society Inc v Carberry [2000] QCA 450

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers without the attendance of either party in accordance with s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

- [1] This is a disciplinary proceeding brought by the Legal Services Commissioner (commission) under s 452 of the *Legal Profession Act 2007 (Qld)* (LPA).¹
- [2] The respondent was formerly a practising solicitor admitted in 2002. She ceased practising in 2014 when her practising certificate was cancelled by the Queensland Law Society. Prior to this application, she was never the subject of disciplinary findings.
- [3] The charges involve various breaches of the trust accounting provisions of the LPA (the trust account charges), as well as for sending discourteous and disreputable emails and using tactics designed to embarrass or frustrate (the other charges). The respondent admits the charges as alleged in the application.²
- [4] The issue is whether she is fit to practice and, if she is, what, if any, conditions should be imposed on her right to do so.

The conduct

- [5] The respondent's conduct is to be assessed as either "unsatisfactory professional conduct" or "professional misconduct" by reference to the LPA's definitions.³

¹ Filed 24 January 2014.

² Agreed statement of facts filed 12 August 2014.

³ See LPA ss 418,419.

- [6] In *Adamson v Queensland Law Society* (Adamson),⁴ Thomas J formulated the test for professional misconduct as:
- “The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”
- [7] The commission argues⁵ the nine trust account charges are properly characterised as professional misconduct because, while not deliberate attempts to misappropriate client monies, they occurred repeatedly and over a long period of time. For this reason alone, the respondent’s conduct “involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence”.⁶
- [8] I respectfully agree with this argument. The trust account charges are, in my view, properly characterised as professional misconduct.
- [9] The same can be said of the other charges, which are arguably more serious. The commission notes the case of *Legal Services Commissioner v Turley*,⁷ in which, as here in Charge 10, a practitioner had made abusive and scandalous accusations against a judicial officer. Charge 11 involved an email which, while not so profane, clearly fell short of the professionalism and detachment required of legal practitioners.
- [10] The respondent does not oppose a finding of professional misconduct as opposed to unsatisfactory professional conduct.
- [11] The professional misconduct is causally attributable to the respondent’s mental health issues. The parties agree that details of the condition need not be published. I will make an order to that effect.

The proposed conditions

- [12] The respondent initially indicated she did not intend to practice law again,⁸ but in submissions, and on 8 March 2016 to Dr Reddan, stated that she would in fact like her practising certificate reinstated and would be “very willing to accept conditions upon her practising certificate”.⁹
- [13] The commission is not opposed to the respondent returning to practice in the event that the applicant and the Tribunal could ensure that the protection of the public, which is the Tribunal’s paramount consideration, is maintained.¹⁰

⁴ [1990] 1 Qd R 498, 507.

⁵ In its submissions dated 18 September 2014.

⁶ LPA s 419(1)(a).

⁷ [2008] LPT 4.

⁸ Agreed statement of facts, [6].

⁹ Report of Dr Reddan dated 13 March 2016, p 7.

¹⁰ See *Attorney-General v Bax* [1999] 2 Qd R 9, 21; *Queensland Law Society Inc v Carberry* [2000] QCA 450 [38].

- [14] There was some confusion on the respondent's part as to a possible application for consent being filed in the Tribunal. As this is a disciplinary proceeding, she was informed that this was not possible or appropriate.
- [15] The matter was set down for a Tribunal hearing at a future date, but at a directions hearing on 9 August 2016, the respondent informed the Tribunal that she was willing to unconditionally accept the orders proposed by Mr Nicolson for the commission in submissions dated 15 April 2016.
- [16] Those proposed orders are:
- (a) An order pursuant to s656D (LPA) prohibiting the publication of the psychiatric report and/or any information in relation to the discipline application which would disclose details of the respondent's mental health condition;
 - (b) A public reprimand (pursuant to s 456(2)(e) LPA);
 - (c) A pecuniary penalty in the range of \$2000.00-\$3,000.00 to be paid within 6 months of the date of the order (pursuant to s 456(4)(a) LPA);
 - (d) Orders placing conditions on any future practising certificate issued to the respondent, including but not limited to:
 - (i) The respondent may only be granted an employee-level practising certificate.
 - (ii) The respondent obtain and provide to the QLS a report from her employer detailing established supervision arrangements within four weeks of recommencing employment as a legal practitioner.
 - (iii) In addition, the respondent be subject to the 9 conditions set out at page 18 of the report of Dr Reddan dated 25 October 2012 (sic: 2013) for as long as she continues practising.
 - (iv) Further to (iii) at least for the first 12 months, the intervals for conditions 1 and 4 set out in Dr Reddan's report be monthly to give effect to the recommendation of Dr Kovacevic (report 25 November 2015, p 10). This should also include details of the applicant's alcohol intake to give effect to the recommendation of Dr Kovacevic's further recommendation (report 25 November 2015, p 10).
 - (v) Further to (ii) condition 2 set out in Dr Reddan's report should include that medication blood levels should be monitored whenever this is possible and meaningful at an interval of at least every 3-6 months or more frequently if clinically indicated to give effect to the recommendation of Dr Kovacevic (report 25 November 2015, p 10).

- (vi) For the first 12 months of any return to legal practice, the respondent be supervised by a solicitor approved by the Court or by the Queensland Law Society (as per the recommendation of Dr Reddan's report 13 March 2016, p 12).

[17] Those additional nine conditions proposed by Dr Reddan (seconded by the commission and the respondent) are:

- (1) That Ms Scheiwe consult with her psychiatrist at a frequency to be determined by the treating psychiatrist.
- (2) That Ms Scheiwe cooperate with the taking of or administering of medication as prescribed by the treating psychiatrist.
- (3) That Ms Scheiwe provide consent to the Queensland Law Society for the Queensland Law Society to write to her treating psychiatrist and her treating general practitioner to enquire into her treatment responsiveness and the progress of any treatment.
- (4) That Ms Scheiwe give consent to her treating psychiatrist and to her treating general practitioner that they provide the Queensland Law Society with short reports advising of any significant change in her mental state or treatment.
- (5) That Ms Scheiwe provide to the Queensland Law Society copies of any reports provided to the Mental Health Review Tribunal and/or Mental Health Court about her condition.
- (6) That Ms Scheiwe (give consent) to inform the Queensland Law Society of any admissions to any mental health facility as soon as possible after admission.
- (7) That Ms Schiewe inform the Queensland Law Society if she should come to the attention of the police even (if) such attention does not result in criminal charges.
- (8) That Ms Scheiwe inform the Queensland Law Society if she becomes subject to any legal action.
- (9) That the Queensland Law Society determine what sanction there should be if Ms Scheiwe fails to adhere to any conditions placed upon the maintenance of her practising certificate.

[18] Having read the circumstances of the charges alongside the psychiatric reports, I am satisfied there is no need to add further conditions on any future practising certificate awarded to the respondent than what the commission proposes in its submissions, and order accordingly.

[19] At the directions hearing, the respondent indicated that, due to her financial circumstances, she would have trouble paying the pecuniary penalty and therefore, while accepting the penalty, respectfully requested that it be in the lower part of the range proposed by the commission. To that end, I see no real utility in imposing a \$3,000.00 penalty as opposed to one of

\$2,000.00. For that reason, I am willing to accept the respondent's request and order that she pay a penalty of \$2,000.00 within six months of this order. The commission did not take any different position at the hearing.

Costs

- [20] As it has been determined that the respondent is guilty of professional misconduct, the Tribunal is bound to make a costs order in the commission's favour unless exceptional circumstances exist.¹¹
- [21] The commission proposes that the respondent pay its assessed costs of the application within 30 days of assessment.¹² The respondent submits that enforcement of any costs order be suspended until six months after her practising certificate is reinstated.¹³
- [22] There are no exceptional circumstances relieving the respondent from the burden of a costs order. Suspending enforcement until after an event that may never happen would have that practical effect. However, in the interests of fairness, I will allow her 12 months from the assessment date to pay the commission's costs.

ORDERS

1. The publication of the psychiatric reports and/or any information in relation to the discipline application which would disclose details of Ms Scheiwe's mental health condition is prohibited.
2. Ms Scheiwe is to be publicly reprimanded.
3. Ms Scheiwe is to pay the applicant a pecuniary penalty of \$2,000.00 within 6 months of the date of this order.
4. The following conditions are placed on any future practising certificate issued to Ms Scheiwe:
 - (i) Ms Scheiwe may only be granted an employee-level practising certificate;
 - (ii) Ms Scheiwe must obtain and provide to the Queensland Law Society a report from her employer detailing established supervision arrangements within four weeks of recommencing employment as a legal practitioner;
 - (iii) Ms Scheiwe is subject to the following conditions for as long as she continues practising:

¹¹ LPA s 462(1).

¹² Applicant's submissions in reply dated 2 March 2015 at [17].

¹³ Respondent's further submissions dated 11 December 2015 at [31].

- (a) Ms Scheiwe must consult with her psychiatrist monthly for the first 12 months, and then at a frequency to be determined by the treating psychiatrist.
 - (b) Ms Scheiwe must cooperate with the taking, or administering, of medication as prescribed by the treating psychiatrist.
 - (c) Ms Scheiwe's medication blood levels be monitored by the treating psychiatrist whenever this is possible and meaningful at an interval of at least every 3-6 months or more frequently if clinically indicated.
 - (d) Ms Scheiwe must provide consent for the Queensland Law Society to write to her treating psychiatrist and general practitioner to enquire into her treatment responsiveness and the progress of any treatment and for such medical practitioners to provide a written response to the enquiries.
 - (e) Ms Scheiwe must consent to her treating psychiatrist and to her treating general practitioner providing the Queensland Law Society with short reports advising of any significant change in her mental state or treatment and details of her alcohol intake, monthly for the first 12 months and then as appropriate.
 - (f) Ms Scheiwe must provide to the Queensland Law Society copies of any reports provided to the Mental Health Review Tribunal and/or Mental Health Court about her condition.
 - (g) Ms Scheiwe must inform the Queensland Law Society of any admissions to any mental health facility as soon as possible after admission.
 - (h) Ms Scheiwe must inform the Queensland Law Society if she should come to the attention of the police, even if such attention does not result in criminal charges.
 - (i) Ms Scheiwe must inform the Queensland Law Society if she becomes subject to any legal action.
 - (j) The Queensland Law Society determine the appropriate sanction should Ms Scheiwe fail to adhere to any conditions placed upon the maintenance of her practising certificate, which may include the cancelling or suspension of the practising certificate.
- (iv) For the first 12 months of any return to legal practice, Ms Scheiwe be supervised by a solicitor approved by the Tribunal or by the Queensland Law Society.

5. Ms Scheiwe pay the applicant's costs to be assessed, payable within 12 months of the assessment.