

CITATION: *Legal Services Commissioner v Scott* [2015] QCAT 402

PARTIES: Legal Services Commissioner
(Applicant/Appellant)
v
Karl Scott
(Respondent)

APPLICATION NUMBER: OCR244-13

MATTER TYPE: Occupational regulation matters

HEARING DATE: 6 July 2015

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**
Assisted by:
Ms Julie Cameron, Legal Panel Member
Dr Margaret Steinberg, Lay Panel Member

DELIVERED ON: 12 October 2015

DELIVERED AT: Brisbane

ORDERS MADE: **THE TRIBUNAL ORDERS THAT:**

- 1. Karl Scott's name be removed from the local roll of legal practitioners;**
- 2. Karl Scott pay the applicant's costs of and incidental to the proceedings, fixed in the amount of \$2,500.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – TRUST MONEY – INVESTIGATION REQUIREMENTS — where the respondent was a solicitor practising law in Queensland – where the respondent maintained a trust account – where the respondent appears to have disbursed monies from the trust account in satisfaction of personal debts and debts attached to business interests – where a complaint was made against the respondent in respect of the wrongful appropriation of trust moneys – where the Queensland Law Society required the

respondent to explain the dispersion of the trust moneys – where the respondent failed to supply an explanation in accordance with the relevant legislation – where the Queensland Law Society issued a further notice requiring the respondent to comply with the original notice requiring an explanation – where the respondent failed to comply with the second notice – where the Legal Services Commissioner filed a disciplinary application against the respondent alleging professional misconduct in respect of the wrongful appropriation of trust moneys and failure to comply with prescribed investigatory requirements – where the respondent failed to respond to the disciplinary application or enter an appearance in the proceedings – whether the respondent breached his professional duties in disbursing trust moneys without authority to satisfy personal debts – whether the respondent breached his professional duties in failing to respond to the notice requiring an explanation of the subject matter asserted in the originating complaint – whether the respondent has committed professional misconduct or unsatisfactory professional conduct.

Legal Profession Act 2007 (Qld) ss 419, 433, 452

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

Attorney-General v Bax (1999) 2 Qd R 9

In Re a Practitioner [1941] SASR 48

Kennedy v Council of Incorporated Law Institute of New South Wales (1940) 13 ALJ 563

Legal Services Commission v Bryant [2005] LPT 003.

Queensland Law Society Incorporated Carberry [2000] QCA 450

Queensland Law Society v Whitman [2003] QCA 438

Re Weare (1893) 2 QB 439

APPEARANCES and REPRESENTATION:

APPLICANT: Martin Kelly for the applicant
RESPONDENT: Did not appear

REASONS FOR DECISION

- [1] This is a discipline application by the Legal Services Commissioner under s 452 of the *Legal Profession Act 2007* (the Act).
- [2] A main purpose of the Act is to regulate Queensland legal practice for the protection of consumers of related professional services.
- [3] The Commission has made a disciplinary application to the tribunal under s 452 of the *Legal Profession Act 2007* to hear and determine two allegations. It is agreed that the hearing should be conducted.
- [4] Chapter 4 of the Act deals with discipline and redressing complaints about the conduct of lawyers.
- [5] This application emanates from an investigation of a complaint referred to the Queensland Law Society as the relevant regulatory body.
- [6] The respondent is a local legal practitioner within the *Legal Profession Act 2007* (the Act).
- [7] A consumer complaint about the respondents conduct as a lawyer made to the Legal Services Commission in 2012 was referred to the relevant regulatory body for investigation and report.
- [8] In broad terms, the respondent is charged with professional misconduct for misappropriation of trust funds and failure to comply with an investigative notice.
- [9] A lawyer who is the subject of a regulatory body is taken to have committed professional misconduct if the practitioner fails to comply with a required explanation for 14 days after being served with a notice under s 443(3) of the Act unless there was a reasonable excuse for not doing so.
- [10] Professional misconduct is defined in s 419 of the Act to include unsatisfactory professional conduct of an Australian legal practitioner involving a substantial or consistent failure to meet or keep up a reasonable standard of competence and diligence that would, if established, justify a finding of unfitness to engage in legal practice.
- [11] The term unsatisfactory professional conduct refers to conduct in connection with the practice of law falling short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.
- [12] The suitability matters that would be considered for admission to the legal profession in Queensland or a local practicing certificate are relevant when assessing fitness for practice.¹

¹ *Legal Profession Act 2007* (Qld) s 419(2).

Context

- [13] The complainant purchased a financial planning client register in 2010. On 19 October 2010 20% of the sale price, or \$82,471.86, was to be placed in a solicitor's trust account for 12 months. The same amount was received by the respondent trading as Lucid Law Pty Ltd to hold in escrow pending finalisation of the conveyance.
- [14] A forensic analysis of the bank accounts operated by the respondent and Lucid Law Pty Ltd, styled "statutory trust account",² indicates the account was opened on 10 December 2009 with a nil balance and remained in that state until 19 October 2010 when \$82,471.86 was transferred into the account by the complainant's company, Twenty 20 Financial Vision Pty Ltd. An additional \$10,000.00 of un sourced funds were deposited into the Lucid Law trust account between 26 October 2010 and 1 November 2010.
- [15] Between 27 October 2010 and 11 May 2011 transfers and withdrawals totalling \$92,470.00 leaving the trust account with a credit balance of \$1.86.
- [16] All but \$10,200.00 of the debits were credited to accounts connected with Lucid Law Pty Ltd.
- [17] Details of the complaint, application and date of hearing have been duly served on the respondent but he has not filed any material in response and did not appear either in person or by representative on the hearing date.
- [18] Consequently, the applicant's evidence is uncontradicted and prima facie proof of the matters to which it relates.
- [19] Records maintained by the Queensland Law Society indicate that the respondent did not hold a practicing certificate between 1 July 2010 and 21 November 2011 and was employed as a solicitor with Raj Lawyers from 21 November 2011 to 27 June 2012. He was entitled to practice as a partner of a law firm from 11 June 2011. However, around 20 December 2011 the society was advised by the respondent that he had been declared bankrupt on 1 July 2011 and gave an undertaking not to personally use or operate or be a signatory on a trust account.³
- [20] On 27 March 2012 the respondent agreed to comply with the society's request to deposit the \$82,471.86 received from the complainant in 2010 to be deposited to a law practice trust account and to report on his management of the funds by 28 March 2012. He did not do either.
- [21] His practicing certificate was cancelled on 27 June 2012 on the ground that he was no longer a fit and proper person to hold a practicing certificate having regard to the misuse of the complainant's funds.

² Ex WTH 17.

³ WTH 2.

- [22] In considering the charges filed against the respondent in the application, it is convenient to consider the second charge first.

Charge 2 – Unauthorised disbursement of trust money

- [23] The Legal Services Commission charge alleges that the respondent breached r 5 of the *Australian Solicitor's Conduct Rules 2011* between 27 October 2010 and 11 May 2011 by engaging in dishonest and disreputable conduct that is conduct demonstrating unfitness for practice or likely to either be materially prejudicial to, or diminish public confidence in, the due administration of justice within the State or bring the legal profession itself into disrepute.
- [24] At issue is whether the respondent's alleged conduct means that he should no longer be held out by the court and the profession as "a fit and proper person to be entrusted with the important duties and grave responsibilities that belong to a solicitor".⁴
- [25] Section 248 of the Act requires a law practice to deposit trust money in a general trust account of the practice as soon as practicable after receiving it.
- [26] The funds in question therefore meet the definition of trust money within s 237(1) of the Act.
- [27] The Tribunal is satisfied that at the time of the alleged misconduct the respondent was an Australian legal practitioner within the meaning of s 6(1) and 419 (1) of the Act.
- [28] The determination of whether or not a particular instance of misconduct amounts to professional misconduct or the lesser unsatisfactory professional conduct under the Act is a matter of degree having regard to the circumstances of each case.
- [29] The Commissioner submits that taken as a whole the respondent engaged in a course of conduct that disregarded his professional and statutory obligations and best interests of his client and support a finding of professional misconduct at common law and under the Act because it indicates –
- ...a failure either to understand or to practice the precepts of honesty or fair dealing in relation to ... clients and thus was unfit to be held out by the court as a member of a profession in whom confidence could be placed.⁵
- [30] The Commissioner also referred to the importance of a solicitor's duties in respect of the operation of their trust account. In *Re a Practitioner* the Court stated:

⁴ *Re Weare* (1893) 2 QB 439, 448.

⁵ *Kennedy v Council of Incorporated Law Institute of New South Wales* (1940) 13 ALJ 563.

trust accounts should be sacred, so that moneys paid into the account should only be paid out to the persons to whom the money belonged, or as directed.⁶

- [31] In the Tribunal's opinion, the respondent's conduct amounts to professional misconduct under s 419(1)(a)(b) of the Act.
- [32] The Tribunal is of the view that the conduct of the respondent, supported by uncontradicted evidence, demonstrates a tendency to prefer his own interests relative to those of his clients, and to disregard his obligations under the professional regulatory framework.
- [33] Dissipating over \$82,000.00 of trust money without a satisfactory explanation or reasonable excuse involves a substantial failure to maintain a reasonable standard of professional competence and diligence for a legal practitioner.
- [34] It falls below the standard of professional conduct observed or approved by members of the profession with good repute and competency.⁷
- [35] The established conduct of the respondent also justifies a finding that the practitioner is not a fit and proper person to engage in legal practice having regard to its dishonest nature and extent and having regard to suitability matters that would be considered for admission or holding of a practicing certificate.

Charge 1 – Failure to comply with investigative requirement

- [36] A lawyer who is the subject of a complaint investigated by a regulatory body such as the Queensland Law Society is taken to have committed professional misconduct if the practitioner fails to comply with an investigative requirement for 14 days after being served with the notice under s 443(3) of the Act unless there was a reasonable excuse for not doing so.
- [37] On 2 July 2012 Queensland Law Society instructed the respondent, pursuant to s 443(1) of the Act, to provide an explanation for conduct relating to the complaint which forms the foundation of this application by 17 July 2012.
- [38] On 23 July 2012 the Queensland Law Society issued the respondent a notice pursuant to s 443(3) of the Act requiring a response to the request for an explanation dated 2 July 2012 within 14 days.
- [39] The respondent has not provided a response to the request for an explanation, and filed no material in these proceedings. The respondent has failed to supply a reasonable excuse for non-compliance.

⁶ [1941] SASR 48, 51.

⁷ *Adamson v The Queensland Law Society Incorporated* [1990] 1 Qd R 498.

- [40] The respondent, therefore, breached his obligations under s 443(3) of the Act. The respondent's conduct, in failing to supply any explanation for the alleged misconduct, as on 2015 amounts to a substantial or consistent failure to meet the meet a reasonable standard of diligence and competence. It also demonstrates a lack of insight into the gravity of the proceedings and egregiousness of his misconduct.
- [41] Therefore, the Tribunal finds that the respondent has committed professional misconduct in respect of Charge 1.

Penalty

- [42] Section 456 of the Act sets out the orders the Tribunal may make in its discretion upon a finding of professional misconduct against a respondent.
- [43] The only appropriate order in these circumstances is that his name be recommended for removal from the local roll.
- [44] The primary purpose of the disciplinary process is to protect the public. A practitioner is duty bound as an officer of the court and as a legal professional to co-operate reasonably in the investigative and hearing processes. The respondent's lack of co-operation bears on his lack of a proper appreciation of the public interest which should have informed his professionalism.⁸
- [45] The focus of the Tribunal in calculating an appropriate penalty must be on the protection of the public. The primary interest is not in punishing an errant practitioner but protecting the public as necessary from those who should not be practicing in this profession.
- [46] The seriousness of the misconduct is self-evident and the practitioners guilty of it are plainly not fit for practice.⁹
- [47] The legal profession requires the highest standards of probity and integrity of its members.
- [48] The public confidence in the legal profession would be significantly undermined if the respondent was held out to be a fit and proper person to practice this profession.
- [49] Accordingly, the Tribunal should order that the respondent's name be removed from the local roll.

⁸ *Queensland Law Society v Whitman* [2003] QCA 438, [36]. See also *Attorney-General v Bax* (1999) 2 Qd R 9, 22 and *Queensland Law Society Incorporated v Carberry* [2000] QCA 450, [7], [34].

⁹ *Legal Services Commission v Bryant* [2005] LPT 003.

Costs

[50] There being no exceptional circumstances in this case justifying an order departing from s 462(1) of the Act, the Tribunal orders costs against the respondent fixed in the amount of \$2,500.00.

Orders

[51] It is the decision of the Tribunal that:

1. Karl Scott's name be removed from the local roll of legal practitioners;
2. Karl Scott pay the applicant's costs of and incidental to the proceedings, fixed in the amount of \$2,500.