

# LEGAL PRACTICE TRIBUNAL

CITATION: *Legal Services Commissioner v Robin John Slipper* [2008]  
LPT 8

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)  
**v**  
**ROBIN JOHN SLIPPER**  
(respondent)

FILE NO/S: 4927/07

DELIVERED ON: 27 June 2008

DELIVERED AT: Brisbane

HEARING DATE: 12 June 2008

TRIBUNAL MEMBER: White J

PRACTITIONER PANEL PERSON: Mr Ken Horsley

LAY PANEL PERSON: Dr Julian Lamont

ORDER: **1. The respondent be publicly reprimanded.**

**2. The respondent pay a penalty of \$2,000 to be paid within three months.**

**3. The respondent pay as compensation to the complainant,**

**(i) \$1,300 for wasted fees;**

**(ii) \$200 for travel and telephone expenses; and**

**(iii) if it is established to the satisfaction of the Legal Services Commissioner that the costs' order in the sum of \$400 made in the Federal Magistrates Court on 26 October 2004 in favour of EF has been satisfied, \$400.**

**4. The respondent pay the Legal Services Commissioner's costs in the amount of \$2,000.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – NEGLIGENCE

AND DELAY – where the respondent was retained by the client to bring an application in the Family Court – where the respondent changed firms but continued to be retained by the client – where the respondent failed to lodge a Notice of Change of Address for Service which resulted in the notice of hearing being sent to the old address – where no appearance was entered by the client or a representative at the hearing resulting in the application being dismissed – whether that conduct constituted unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – DISCIPLINARY PROCEEDINGS – STATUTORY PROCEEDINGS – QUEENSLAND – where the respondent failed to respond to a request by the Legal Services Commissioner to provide a further explanation about a complaint despite having been issued with a notice under s 269 (3) of the *Legal Profession Act 2004* (Qld) – whether that conduct constituted professional misconduct

[\*Legal Services Commission v Bussa\*](#) [2005] LPT 005; 3383 of 205, 4 October 2005, distinguished

*Family Law Rules 2004* (Clth), reg 8.06

*Legal Profession Act 2004* (Qld), s 269

*Legal Profession Act 2007* (Qld), s 418, s 419

COUNSEL: Mr S A McLean for the Legal Services Commission

Mr G Cranny solicitor for the respondent

SOLICITORS: Legal Services Commissioner

Gilshenan & Luton for the respondent

[1] The Legal Services Commissioner (“LSC”) filed a discipline application on 6 June 2007 against the respondent solicitor, an Australian legal practitioner, pursuant, to s 276 of the *Legal Profession Act 2004* (“2004 Act”). That Act was replaced by the *Legal Profession Act 2007* (“the 2007 Act”) which came into force on 1 July 2007. The conduct, the subject of the charges, occurred in 2004 and 2005 respectively. However, the respondent’s conduct is to be assessed by reference to the definition of “professional misconduct” and “unsatisfactory professional conduct” as defined in the 2007 Act.

[2] The charges are that:

- the respondent has failed to maintain reasonable standards of competence or diligence in relation to the conduct of Federal Magistrates Court proceedings on behalf of GH (“the client”); and

- the respondent failed to comply with a Notice issued by the Legal Services Commissioner pursuant to s 269(3) of the 2004 Act.

The LSC contends that the respondent's conduct in respect of the first charge constitutes unsatisfactory professional conduct and in respect of the second charge constitutes professional misconduct. The respondent does not dispute the charges nor their characterisation.

- [3] "Unsatisfactory professional conduct" is defined in s 418 of the 2007 Act:  
 "*Unsatisfactory professional conduct* includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner."

The meaning of "professional misconduct" is set out in s 419:

- "(1) *Professional misconduct* includes-
- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
- ..."

### **Charge 1**

- [4] The respondent commenced employment with the legal firm Lake Lawyers at the Southport office of the firm on 27 February 2004. The respondent was then aged 48 years. He had been admitted as a solicitor on 8 November 1993 but had not been employed in the work of a solicitor until 2002 when he was employed by Associated Lawyers at the Gold Coast. Lake Lawyers was retained by the client in February to bring an application against her husband for contravention of a Family Court order dated 17 October 2003.
- [5] The Family Court order about which the client consulted with Lake Lawyers was a consent order entered in the Magistrates Court at Southport about the division of property between the client and her husband. The client's complaint concerned her access to certain furniture. The client's counsel was Mr Rod Clifford who attended to family law work for Lakes Lawyers and was regularly in attendance in the firm's office. Whilst the respondent understood that Mr Clifford was the client's first point of contact for any queries or discussions, the respondent was the solicitor in the firm with whom she should deal should Mr Clifford not be available.
- [6] The respondent left Lakes Lawyers on or about 30 June 2004 and commenced his own practice "Slipper Lawyers" on or about 1 July 2004.

- [7] The client's file remained with Lake Lawyers until 30 July 2004 when the practice was placed into receivership by the Queensland Law Society. In the meantime, the client's application had been filed in the Family Court on 17 July 2004. The contact address for service on that application was Lake Lawyers at their address at Southport. The application was witnessed by Mr Clifford. The client's application was mentioned in the Family Court on 23 July 2004 and Mr Clifford appeared for the client.
- [8] In August 2004 the client retained the respondent to continue with her application in the Family Court. In an undertaking to the Law Society dated 9 August 2004 the respondent undertook that "in carrying out [his] duties as a solicitor for [the client]" he would endeavour to protect costs and outlays that might be owing to Lake Lawyers. The client authorised the transfer of her file from the Law Society to the respondent by an authority dated 9 October 2004 but it is accepted that the respondent was acting for her prior to that date. On 20 August 2004 the client's application was again mentioned in court and Mr Clifford again appeared. The court file indicates that he was instructed by Slipper Lawyers. Mr Clifford had appeared on a number of mentions in relation to the application in the Magistrates Court in Southport.
- [9] The client needed to travel to New South Wales because of the serious ill health of a close family member. By letter dated 25 August 2004 the respondent wrote to the Family Court advising that his firm acted for the client and sought, as a matter of urgency, that her application be listed for hearing. The client received a letter dated 2 September 2004 from the respondent that her matter had been "notified" to the Family Court.
- [10] The client went to New South Wales and, having heard nothing from the respondent about her application, on 28 October 2004, after attempting unsuccessfully to contact Mr Clifford and the respondent, contacted the registry of the Family Court in Brisbane. She was informed that the hearing date for her urgent interlocutory application had been 26 October 2004 and, since she was not present herself nor represented, her application had been dismissed. The respondent had failed to lodge a Form 8 Notice of Change of Address for Service in breach of reg 8.06 of the *Family Law Rules* 2004. The registry of the Family Court had sent the notice about the hearing date to the address for service appearing on the application, namely Lake Lawyers in Southport. Regulation 8.06 provides:
- "If a party's address for service changes during a case, the party must file a Notice of Address for Service within 7 days after the change.

Note 1            A new address for service will be needed if a party:

- (a) acts in person and changes address;
- (b) initially acts in person and later appoints a lawyer;
- (c) initially appoints a lawyer and later acts in person; or
- (d) changes lawyers during the case.

Note 2            Until a Notice of Address for Service is filed and served, the previous address remains on the court record as the

address for service and all documents will be served at that address unless subrule 8.04(2) applies.”

The client eventually made contact with Mr Clifford but nothing eventuated about re-listing her application and on 6 December 2004 she made a complaint to the LSC.

- [11] The respondent accepts that it was his responsibility to file a notice of change of address for service and the failure to do so constitutes unsatisfactory professional conduct within the meaning of the 2007 Act. Mr Cranny, who appeared on behalf of the respondent, submitted that, in reality, the respondent was no more than a second year lawyer when the complained of conduct occurred. The respondent had 12 months in legal practice with Associated Lawyers where he had engaged only in commercial matters. Mr Cranny submitted that the respondent had had no proper grounding in the relationship between a solicitor and counsel and their respective responsibilities. Mr Mclean, for the LSC, made a similar submission, that is, that the respondent had made a wrong assumption about his role vis-a-vis his client and her barrister. Whilst the respondent does not seek to “blame” Mr Clifford for what occurred, nonetheless, it may be accepted that the ambiguous role of counsel may have contributed to the respondent’s failure to notify the change of address.

### **Consequences**

- [12] When the Federal Magistrates Court dismissed the application on 26 October 2004, Magistrate Baumann ordered that the client pay the respondent husband’s costs of and incidental to the application fixed in the sum of \$400 within 30 days. Added to the order was the observation:

“THE COURT NOTES:

3. The Court had severe reservations as to whether the contravention Application based on an interim order of the Court, could be properly prosecuted.”

The \$400 has not been paid by the client to the respondent husband. The respondent solicitor accepts that he has an obligation to compensate the client if she is required to pay that amount. There was no evidence before the Tribunal as to whether any other adjustment had been made between the parties to the matrimonial proceedings which would encompass the order. Further investigation is required.

- [13] The client has deposed that she has paid \$1,300 in legal costs to Lakes Lawyers and Mr Clifford for which she has receipts. Whilst it was argued, but only faintly, that she may have received some benefit from those proceedings, it is difficult to characterise those payments as anything other than wasted. That Mr Clifford has been paid is not to the point. Had the application proceeded on the day it may have been successful, or it may not, but the opportunity to test the worth of the application was denied the client. It is an amount which she ought to have as compensation.

- [14] The client also seeks compensation of \$300 in travel expenses and \$400 on telephone and facsimile transmissions in attempting to deal with the matter from New South Wales. These seem to be “ball park” figures. The client has produced no receipts or attempted to itemise her assessment. The amount for telephone seems very high. There is no indication as to whether the travel was solely for the purpose of attending to this matter or whether, in any event, the client was returning to Queensland, how she travelled, and the cost of that travel. Accepting that there would have been some outlays which were referable solely to this matter the amount of \$200 seems reasonable.

## **Charge 2**

- [15] The LSC received a complaint dated 18 November 2005 about the respondent’s conduct relating to a conflict of interest matter. On 6 December 2005 the LSC referred the complaint to the Queensland Law Society for investigation. On 1 August 2006 the Queensland Law Society returned the investigation to the LSC. By letter dated 29 September 2006 the LSC requested the respondent to provide a further explanation about the complaint to be completed by 20 October 2006.
- [16] By letter dated 31 October 2006 the LSC wrote to the respondent requesting an explanation by 15 November 2006 pursuant to s 269(1) of the 2004 Act. By letter dated 23 November 2006 the respondent advised the LSC that a response would be provided no later than 27 November 2006. The respondent failed to do so.
- [17] By letter dated 13 December 2006 the LSC issued a notice to the respondent pursuant to s 269(3) of the 2004 Act requiring his compliance within 14 days with the request made in the letter of 31 October 2006.
- [18] By letter dated 22 December 2006 the respondent sought an extension of time until 19 January 2007 because of the exigencies of the season. An extension was granted until 19 January 2007. The respondent again failed to provide an explanation within the extended time.
- [19] The respondent did not respond to the notice until 16 March 2007. The complaint itself was dismissed on 27 November 2007 but the respondent’s conduct in failing to respond to the requests for explanation from the LSC became the subject of a discipline charge.
- [20] Section 269 of 2004 Act provides, relevantly:
- “(1) The entity carrying out an investigation...may, for the investigation -
    - (a) require an Australian legal practitioner who is the subject of the investigation -
      - (i) to give the entity, in writing or personally, within a stated reasonable time a full

explanation of the matter being investigated;  
or

...

(b) ...

(2) Subject to subsection (6), [not here relevant] the practitioner must comply with a requirement under subsection 1(a).

...

(3) If the practitioner fails to comply with the requirement, the entity may give the practitioner written notice that if the failure continues for a further 14 days after the notice is given the practitioner may be dealt with for professional misconduct.

(4) If notice under subsection (3) is given and the failure continues for the 14 day period -

(a) the practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and

(b) the entity may bring a charge of professional misconduct against the practitioner.

...”

[21] The respondent accepts that he has engaged in professional misconduct in that he failed to respond to the notice from the LSC. The explanation which the respondent gives concerns matters personal to himself including serious family illnesses and difficulties with reduced staff at his firm. He does not advance these circumstances as “a reasonable excuse”, merely as contributing factors to explain why he failed to respond in a reasonable time.

[22] It has been said repeatedly in matters before this Tribunal and equivalent bodies in the other States that it is essential that legal practitioners respond promptly when an investigating authority seeks a reply or an explanation about complaints. Complaints by members of the public must be investigated expeditiously and resolved if confidence in the system established for regulating the conduct of lawyers is to be maintained. Often it is delay in dealing with a client’s matter which prompted the complaint in the first place. The need for a timely response is emphasised in the legislation by providing for a time limit of 14 days to respond to a notice. Failure to respond within that period means that, prima facie, the legal practitioner has been guilty of professional misconduct. If nothing else, this should serve as a forceful reminder to members of the legal profession of their obligation to co-operate with the investigating entity. Had the respondent complied with the request for information, the time of the LSC and the stressful experience for the respondent would have been reduced, if not eliminated.

**Penalty**

- [23] The LSC accepts that the conduct of the respondent in respect of both matters were isolated incidents. The respondent now has three support staff including two paralegals to assist him in his practice together with a consultant solicitor. There is no suggestion that he now conducts his practice in a way which could expose him to complaints of a similar kind. There is no allegation of dishonesty against him. The respondent indicated to the LSC at a very early stage that he would not contest the discipline application in any material manner. The respondent's affidavit expresses contrition for the way in which the client's application was handled and he offers her an apology. The respondent himself received no financial reward from the client. All fees were received and accounted for either by Lake Lawyers, of which he was not a principal, or by Mr Clifford.
- [24] The parties are agreed that appropriate orders for both charges would be a public reprimand, a financial penalty in the range of \$1,000 to \$3,000 and a compensation order in favour of the client. The Tribunal accepts the propriety of that agreement. Mr McLean referred to the case of *Legal Services Commission v Bussa*<sup>1</sup> where a penalty of \$6,000 was imposed. That was a much more serious case of unprofessional conduct and professional misconduct involving lengthy delay so that a cause of action was time-barred for a client. It is not comparable with what occurred here. A penalty of \$2,000 is appropriate.
- [25] The parties are agreed that the respondent should pay the Legal Service Commissioner's costs fixed in the sum of \$2,000.
- [26] The orders are that:
1. The respondent be publicly reprimanded.
  2. The respondent pay a penalty of \$2,000 to be paid within three months.
  3. The respondent pay as compensation to the complainant,
    - (i) \$1,300 for wasted fees;
    - (ii) \$200 for travel and telephone expenses; and
    - (iii) if it is established to the satisfaction of the Legal Services Commissioner that the costs' order in the sum of \$400 made in the Federal Magistrates Court on 26 October 2004 in favour of EF has been satisfied, \$400.
  4. The respondent pay the Legal Services Commissioner's costs in the amount of \$2,000.

---

<sup>1</sup> [2005] LPT 005.