

LEGAL PRACTICE TRIBUNAL

CITATION: *Legal Services Commission v Walters* [2007] LPT 006

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

RUSSELL GALT WALTERS
(respondent)

FILE NO: BS8655/05

DELIVERED ON: 1 June 2007

DELIVERED AT: Brisbane

HEARING DATE: 18 May 2007

TRIBUNAL MEMBER: Moynihan J

PANEL MEMBERS: Ms K Keating
Mr P Mullins

ORDER: **1. The name of the respondent be removed from the local roll.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – MISLEADING COURT AND PERVETING COURSE OF JUSTICE - FALSIFICATION OF DOCUMENTS AND TRANSACTION – NEGLIGENCE AND DELAY – disciplinary proceedings – where finding of professional misconduct and unprofessional conduct – whether practitioner fit and proper person to practice - whether practitioner should be struck off the roll.

Legal Profession Act 2004 s276
Queensland Law Society Act 1952 (Qld) s 5H(1), s5H(2), s5G(a)
Attorney General v Box [1999] 2 Qd R 9
Legal Services Commission v Baker [2005] LPT 002, considered.
Legal Services Commission v Baker [2006] QCA 145, considered.
QLS v Carberry [2000] QCA 450, considered.
QLS v Priddle [2002] QCA 297, considered.
Re Nelson (1991) 106 ACTR 1, considered.

COUNSEL: SA McLean for the applicant.
JC Bell QC for the respondent.

SOLICITORS: Legal Services Commission for the applicant.
Walters & Co for the respondent.

- [1] The Legal Services Commissioner (the *applicant*) brings a disciplinary application pursuant to s 276 of the *Legal Profession Act 2004* (the *Act*) against Russell Galt Walters (the *respondent*) and seeks to have him struck off the local roll of practitioners for professional misconduct and unprofessional conduct and practice.
- [2] It was submitted on the *respondent's* behalf that it was not appropriate to remove his name from the roll. The following order was proposed on his behalf:
- (a) a declaration that the *respondent* has been guilty of professional misconduct;
 - (b) the *respondent* is publicly reprimanded;
 - (c) the *respondent* pay an amount to be fixed to the Legal Practitioner Interest on Trust Accounts Fund by 18 August 2007 and in default the matter be re-listed for consideration of making further orders;
 - (d) any practising certificate issued to the *respondent* be subject to a condition that he not engage in practice as a principal;
 - (e) the *respondent* forthwith notify the applicant:
 - (i) if he ceases to be an employee of [another legal practice];
 - (ii) of any proposal that he practise law in any capacity other than as an employee of [another legal practice].
 - (f) the *respondent's* practising certificate be suspended for a period of one year but that such suspension shall not become operative unless the *respondent*:
 - (i) defaults in the performance of any of the terms of this order;
 - (ii) is convicted of a disciplinary charge within a period of three years.
 - (g) the *respondent* pay the Applicant's costs to be agreed or assessed.
- [3] The application was dealt with on the basis of agreed facts. In the submissions made on his behalf the *respondent* admitted he had been guilty of professional misconduct in respect of the agreed facts in paragraph 11(c) and 11(d) and paragraph 73(d) and 73(e); these relate to charges 8 and 9 and will be dealt with later. It was also admitted that he had been guilty of unprofessional conduct and practice for serious neglect and undue delays.
- [4] The *respondent* accepted that his conduct was below the standard acceptable for a solicitor and raised circumstances, which it was submitted, were important in assessing his character from the perspective of determining whether or not his name should be removed from the roll. These are dealt with in the course of these reasons.
- [5] There were initially seven charges, charges six and seven have now been withdrawn and new charges eight and nine have been added. The charges which are proceeding are set out below together with considerations advanced on the *respondent's* behalf in respect of each charge.

- [6] Charge 1 (Forgery/Misrepresentation): On or about 27 June 2003, the respondent:
- (a) forged the signature of his client, Mr Terry John Wyeth on an application for dissolution of Marriage (“divorce application”) which was to be filed in the Family Court of Australia (“Family Court”);
 - (b) falsely attested to the purported signature of Mr Wyeth on the divorce application;
 - (c) misled the Family Court by filing the divorce application at the Brisbane registry.
- [7] The following considerations were put forward on the respondent’s behalf in respect of the charge.
- [8] On 9 July 2003, when questioned by his client, the *respondent* immediately admitted that he signed the application and that he had done it to avoid the consequences of the failure to ensure the earlier signed application had been lodged. Secondly, on 9 July 2003, he immediately called Mrs Wyeth and informed her of his wrong doing. Thirdly, after filing the fresh application, he referred his client to another solicitor. Fourthly, the respondent received no financial or personal gain. Fifthly, there is much evidence before the Tribunal to believe that this conduct was out of character for him. Sixthly, at the time, the *respondent* was suffering a psychological disorder which has now all but disappeared and there is no or no real likelihood of reoccurrence.
- [9] Charge 2 (Breach of s 5H(1) Queensland Law Society Act 1952): In breach of s 5H(1) of the *Queensland Law Society Act 1952* (“the Act”) the *respondent* failed to comply with the requirement to give the Council of the Queensland Law Society Incorporated (“the Council”), within a reasonable time an explanation in writing of a matter being investigated pursuant to s 5G(a) of the *Act*.
- [10] Charge 3 (Breach of s 5H(2) Queensland Law Society Act 1952): The *respondent* failed to comply with a notice given by the *Council* under s 5H(2) of the *Act* for a period of 14 days after the giving of the notice.
- [11] The following considerations were put forward on the *respondent’s* behalf in respect of these charges.
- [12] As to charge 2 although he admitted his wrong doing immediately to his client he did not provide any explanation to the Law Society when requested to do so. The *respondent*, suffering a psychological disorder found it difficult to respond.
- [13] As to charge 3 the *respondent* provided explanations (as requested), but they were late:
- (a) for Donoghue: he was initially a month late and then when a further explanation was requested (all in 2003) he was six weeks late;
 - (b) for Best: he was a month late (in early 2004).

[14] Charge 4 (Best Complaint – Neglect/Delay/Diligence and Competence): When acting in the administration of the estate of Sydis May Gall deceased (“the *estate*”) during the period August 2002 and March 2004, the *respondent*:

- (a) has been guilty of serious neglect or undue delay; and/or
- (b) has failed to maintain reasonable standards of competence or diligence in relation to the conduct of his practice.

[15] It was said on the *respondent’s* behalf that in late 2002 and during 2003 the respondent failed in his duty to his client to proceed with diligence. However on 11 March 2004, when he did provide an apology, he made no excuses, but said:

We apologise for the delay in finalising the administration of the estate. We find it difficult to explain the delay or our failure to respond to your correspondence. In the circumstances we have not charged any professional fees.

This lack of diligence ‘seems to be out of character as’ the long term client experience and opinions demonstrate.

[16] Charge 5 (Sims Complaint – Neglect/Delay/Diligence and Competence – Complaint by Sharyn Sims): When acting in the Family Court proceedings (“*proceedings*”) on behalf of his client Sims during the period November 2002 and July 2003, the *respondent*:

- (a) has been guilty of serious neglect or undue delay; and/or
- (b) has failed to maintain reasonable standards of competence or diligence in relation to the conduct of his practice.

[17] It was acknowledged that during 2003 the *respondent* failed in his duty to his client to proceed with diligence. However, he accepted responsibility for his failure and informed the court, by affidavit sworn on 16 April 2003, to his client’s benefit, that he had ‘not been diligent’.¹

[18] The *respondent* acted for the complainant for over two years ‘without ever having an intention of seeking payment of any fees as he was sympathetic to her circumstances’.

[19] Charge 8 (Diligence and Competence – Complaint by Evans): When acting for Mr Trevor Evans (“*client*”) in respect of a workers compensation claim (“*claim*”) during the period between February 2001 and 30 June 2006, the *respondent*:

- (a) has been guilty of neglect and undue delay;
- (b) has failed to maintain reasonable standards of competence or diligence in relation to the conduct of the matter, in which he received instructions to act for Mr Evans.

¹ see Annexure 2 to Statement of Agreed Facts.

- [20] Charge 9 (Misleading Statements – Complaint by Evans): Between February 2001 and 30 June 2006 the *respondent* misled his client and lied concerning the prosecution of the claim.
- [21] It was said on the *respondent's* behalf in respect of these charges that in truth his misconduct arose from his failure to inform his client that he believed he had no arguable case (which he ought to have done at the outset). He failed to disclose his failure to prosecute the claim and even hid and misled the client about his failure. It is accepted that this conduct constitutes a serious breach of his professional obligations.
- [22] The issue for the *Tribunal* is whether the *respondent* is a fit and proper person to practice as a solicitor notwithstanding his admitted conduct or omissions, elements of which are accepted as constituting professional misconduct and other elements of which are accepted as constituting unprofessional conduct and practice.
- [23] It is to be noted that the *respondent* has co-operated with the applicant since the discipline application was served, has agreed to the facts in the agreed statement and made concessions referred to earlier. His conduct was not motivated by personal gain, greed or self advancement.
- [24] The *respondent* was born on 9 July 1951 and admitted as a solicitor on 30 March 1976, having served five years articles and completed the solicitors' board examination.
- [25] After his admission the *respondent* worked as an employed solicitor until September 1979. He then practised as a sole practitioner until July 2006 when as a result of the complaint by a client the matters the subject of the charges came to the attention of the applicant. He was a member of the Council of the Law Society for four years during the time he was a sole practitioner. The events the subject of the charges extended roughly from early 2001 to March 2004.
- [26] The *respondent* gave evidence by affidavit and before the *Tribunal*. He explains the events the subject of the charges by referring to his loss of his legal secretary and office manager after 12 years. Her support was essential to the day to day functioning of the practice. He had become very dependent on her and he was unable to find a competent replacement.
- [27] The *respondent's* work fell considerably behind, files became disordered, bring up dates were not entered and messages were not accurately taken. For these reasons he found the period between October 2002 and April 2003 'very difficult'.
- [28] The *respondent* went on to depose that although he 'did not realise it at the time' he had come to believe that his difficulties 'were exacerbated by a sense of disillusionment with his situation'. In this context he spoke of working long hours, taking limited holidays and that the returns from the practice were also modest.
- [29] On 17 July 2006, after the disciplinary proceedings had been served, the *respondent* amalgamated his practice with another legal practice on the basis that he worked for them as long as they wanted him to. He is still employed in that position and is well regarded by his employer.

- [30] The *respondent* deposes to having come to enjoy and appreciate working in conjunction with other practitioners, sharing and discussing problems and discussing files and not having administrative responsibilities.
- [31] In a report dated 17 August 2006 the *respondent* is diagnosed as having a psychological disorder (an adjustment disorder with mixed anxiety and depressed mood) in response to abnormally high levels of work place pressure.
- [32] From a psychological perspective he has a very low risk of re-offending. The risk would be reduced if he undertook recommended therapy.
- [33] The *respondent* has received psychological counselling in respect of his problems and how to deal with them and deposes that this has been beneficial.
- [34] Public confidence in the courts and the legal profession depends on having practitioners who are competent, aware of their obligations to courts and clients and who act in accordance with those obligations. It also depends on those departing from performance of their obligations being dealt with promptly and effectively.²
- [35] Important as personal circumstances are and the efforts of the practitioner to address offending conduct the overriding consideration in cases such as this is the public interest. The conduct has to be evaluated as a whole although it is convenient to look it in terms of categories. The test for removal from the roll is well established by the cases cited. It is whether a practitioner is a fit and proper person to be 'entrusted with the important duties and grave responsibilities' of a practitioner.
- [36] The conduct the subject of charge one is admitted to constitute professional misconduct. In order to escape the embarrassment of dilatoriness in pursuing his client's affairs the *applicant* forged his client's signature, falsely attested it and filed the proceeding in the Family Court. That he had done so came to light when his client's wife recognised that the signature on the application was not her husband's. When confronted with this the *respondent* admitted that the signature was his. There is no reason for thinking he would have done so had he not been found out.
- [37] Forgery is a very significant departure from the conduct expected of a solicitor. In this case the forgery led to the court accepting the application as signed by the *respondent's* client and it became an apparently legitimate court document. In other words the forgery impugned the legitimacy of the court process.
- [38] As to charges 8 and 9 the *respondent* accepts that from February 2001 to 30 June 2006, where it is conceded proper misconduct occurred, he failed to take appropriate steps to give his client the benefit of his professional judgment, to keep the client fully informed and failed to prosecute the claim so that it became statute barred. He then failed to disclose that he had failed to carry out instructions and 'misled and lied' to his client.
- [39] These are breaches that go to the heart of a solicitor's professional obligations to the court and to a client. The *respondent's* conduct was in his own interest, initially because he was unable (in his account) to give bad news to his client and then to cover up his transgressions.

² *Attorney General v Box* [1999] 2 Qd R 9; *QLS v Carberry* [2000] QCA 450; *Legal Services Commission v Baker* [2005] LPT 002; [2006] QCA 145; *QLS v Priddle* [2002] QCA 297.

- [40] Failure to comply with Law Society requests for explanation in respect of complaints which the *respondent* knew to be well founded is a substantial departure from professional standards. It impeded the applicant's promptly dealing with complaints and protecting the *respondent's* clients, and the public interest
- [41] Delay and neglect bring the profession into disrepute.³ It was hardly a concession to clients not to charge fees in the circumstances of delay which is a breach of a practitioner's professional obligations.
- [42] It may be accepted that the prospects of the *respondent* engaging in offending conduct in future are lessened by his working under supervision with other lawyers, and his having counselling and having acquired insight. That said it cannot be doubted he knew his conduct was not acceptable, took no steps to address it but concealed it and took steps to avoid taking responsibility for his actions and omissions on a number of occasions.
- [43] Counsel for the applicant has provided a table of cases dealing with professional misconduct as a consequence of forgery. Not all of them resulted in striking off. The general principles are clear – each case turns on its own facts as to whether conduct justified striking off.
- [44] Notwithstanding the considerations in the *respondent's* favour the overall effect of his conduct in this case leads to the conclusion that he is not a fit and proper person to practice as a solicitor and his name should be removed from the local roll.

³ See *Re Nelson* (1991) 106 ACTR 1.