

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Beatty* [2019] QCAT 45

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)  
v  
**MICHELLE ROSENA BEATTY**  
(respondent)

APPLICATION NO/S: OCR073-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 25 February 2019

HEARING DATE: 25 February 2019

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Dr Susan Dann

Dr John de Groot

- ORDERS:
- 1. It is recommended that the name of the respondent, Michelle Rosena Beatty, be removed from the roll of legal practitioners of Queensland;**
  - 2. The respondent shall pay the applicant's costs of and incidental to this discipline application. Such costs to be assessed as if the matter were proceeding in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent failed on four occasions to respond to a written notice issued under s 443(3) of the *Legal Profession Act 2007* (Qld) by the Legal Services Commission – where there is no engagement by respondent in the disciplinary proceeding – whether respondent has committed unsatisfactory professional conduct or professional misconduct – whether to recommend the name of the respondent be removed from the Roll of practitioners

*Legal Profession Act 2007* (Qld), s 443, s 462

*Legal Services Commissioner v Bui* [2018] QCAT 424

**APPEARANCES &  
REPRESENTATION:**

Applicant: D A Holliday, instructed by Legal Services  
Commissioner

Respondent: No appearance

**REASONS FOR DECISION**

- [1] The applicant, Legal Services Commissioner, has brought this discipline application against the respondent, Michelle Rosena Beatty, pursuant to the *Legal Profession Act 2007* (Qld) (“LPA”).
- [2] I note at the outset that an order for substituted service on the respondent was made on 21 August 2018, and there is material before the Tribunal which proves that service on the respondent was effected in accordance with that order for substituted service. There has been no appearance today by the respondent to answer or oppose the discipline application. Indeed, there has been no engagement by the respondent whatsoever in this disciplinary proceeding. She did not even file a response in this application.
- [3] The discipline application states and particularises four charges. In summary, each of those is a charge that, in breach of s 443 of the LPA, the respondent failed to respond to a written notice which had been issued by the Legal Services Commissioner. Section 443 of the LPA relevantly empowers the applicant to issue a notice against a practitioner who is the subject of an investigation, and require that practitioner to respond to the notice for information. The practitioner is obliged to respond to the notice and indeed, section 443(3) expressly provides:
- 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] It is noted also that failure to comply with a notice is made an offence under section 443(2).
- [5] The charges are as follows:
1. That on or about 17 August 2016, the respondent failed to respond to a written notice issued on 1 August 2016 by the applicant, pursuant to section 443(3) of the *Legal Profession Act 2007*;
  2. That on or about 28 September 2016, the respondent failed to respond to a written notice issued on 13 September 2016 by the applicant, pursuant to s 443(3) of the *Legal Profession Act 2007*;
  3. That on or about 23 December 2016, the respondent failed to respond to a written notice issued on 8 December 2016 by the applicant, pursuant to s 443(3) of the *Legal Profession Act 2007*;

4. That on or about 3 June 2017, the respondent failed to respond to a written notice issued on 19 May 2017 by the applicant, pursuant to s 443(3) of the Legal Profession Act 2007.
- [6] The discipline application then, in respect of each charge, particularises precisely the circumstances in which each of the written notices was given. The complaints by the relevant clients are identified, as are the particulars of the correspondence that followed from the Legal Services Commission, including, obviously, the relevant notices pursuant to s 443.
- [7] Moreover, in respect of each charge, particulars are given of the correspondence in each case by which the applicant gave the respondent the requisite notice that if she did not reply, then she may be dealt with for professional misconduct.
- [8] As the respondent has neither appeared, nor engaged in any way, in this discipline proceeding, it is necessary for the applicant to prove its case to the requisite standard against the respondent. For that purpose, the applicant has filed, and relies particularly, on an affidavit of Tessa Anne McLean, who is a senior investigator in the applicant's office. That affidavit, together with supplementary affidavits filed on behalf of the applicant, more than sufficiently prove each and every one of the allegations which were made in the particulars to each charge.
- [9] Having regard to the affidavit evidence filed on behalf of the applicant, it is therefore appropriate for this Tribunal to find that each of the charges has been proved to the requisite standard.
- [10] Having found that each of the charges has been proved, it is then necessary to consider the proper characterisation of the conduct engaged in by the applicant. Recently, in *Legal Services Commissioner v Bui*,<sup>1</sup> this Tribunal noted the seriousness of noncompliance with investigations being conducted by the applicant, Legal Services Commissioner. As was said in that case, legal practitioners need to understand that correspondence to them from either or both of the Legal Services Commissioner or the Queensland Law Society, is a serious business, and demands a response. Solicitors cannot simply think that matters are going to go away and leave them alone; they will not. That is emphasised in the present case when one understands the serious mandatory requirements of s 443, and the express consequences which the legislation provides for noncompliance with s 443.
- [11] The applicant has put some material before the Tribunal in relation to the antecedents of the respondent. She was admitted to practice on 3 February 1998. From 3 July 2012 to the 23 February 2017, she was ILP legal practitioner director at MRB Law Pty Ltd. It is noted from the affidavit most recently filed on behalf of the applicant that as at the dates for charges one, two and three, the respondent's professional postal address was at care of that incorporated law firm. Then from 24 February 2017 to 7 June 2017, the respondent was an employed solicitor at Virtual Legal, a firm situated in Eagle Street Brisbane. And from 24 February 2017, her professional postal address was at that law firm. I note these addresses because of course they were the addresses to which the relevant correspondence was sent in each case.

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<sup>1</sup> [2018] QCAT 424.

- [12] On 24 February 2017, the respondent consented to a number of conditions being imposed on her practicing certificate, including that she be on a restricted practicing certificate until 30 June 2018, and that she undergo, at the Law Society's direction, a health assessment of the respondent's fitness to practice by a psychiatrist of the Law Society's choosing. According to the affidavit filed before the Tribunal, the Queensland Law Society booked an appointment for the respondent to undergo a health assessment with a nominated psychiatrist on 11 April 2017, and that she underwent that assessment. The outcome of that assessment is, however, not before the Tribunal. In any event, the respondent ceased employment with Virtual Legal on 7 June 2017, and did not renew her practicing certificate. According to the information before the Tribunal, the respondent has not practiced as a solicitor since 30th June 2017.
- [13] As already noted, the respondent has not engaged whatsoever in this discipline proceeding brought against her by the Legal Services Commissioner.
- [14] It is trite to note that a fundamental incident of the privilege of legal practice is an obligation to obey the law. That includes the statutory requirements of the legislation by virtue of which a practitioner has the rights and privileges of practice, in this case the LPA. By her repeated conduct in failing to respond to the applicant's notices under s 443, the respondent displayed what can only be described as a profound indifference to her legal obligations under the LPA. When one sees that in combination with the subsequent history of the respondent's nonrenewal of her practicing certificate, and her complete lack of engagement in the current discipline proceeding, the only sensible inference available is that the respondent is indifferent to her status as a member of the legal profession.
- [15] As I have already noted, this Tribunal, in the case of *An Bui*, recently emphasised again the importance and seriousness attaching to these provisions of the LPA which demand cooperation and provision of information by practitioners who are under investigation.
- [16] The Tribunal is satisfied that the level of indifference demonstrated by the respondent in her repeated failure to comply with the notices given under s 443 amply warrant a finding that in each case, she engaged in professional misconduct.
- [17] Having found that the respondent engaged in professional misconduct, one turns then to consider the appropriate orders to be made under the LPA. The touchstone for the making of such order is the fundamental proposition that the legal professional disciplinary jurisdiction is protective of the public, rather than punitive. That being said, it is clear enough that the public needs to be protected from a person who is indifferent to the fundamental obligations which rest on them by virtue of their office as a legal practitioner. As this Tribunal said, again, in *Bui's* case:<sup>2</sup>

It is a serious matter for a practitioner to ignore a notice given under section 443 for the provision of information. It exhibits a fundamental lack of appreciation for the responsibilities which practitioners owe to the profession in general, and evinces a lack of understanding of the role of the regulator in ensuring probity within the ranks of the profession. A failure to respond to a s 443 request for information is a serious matter, and a practitioner who ignores a section 443

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<sup>2</sup> At [14]-[15].

notice could expect to have serious consequences visited upon them for that failure.

- [18] It is again trite to note that the privilege of membership of the legal profession affords a person significant benefits, both professional and personal. The corollary of course, is that for those benefits there are serious responsibilities and obligations. I have already emphasised the fundamental nature of the requirement for a legal practitioner to abide by and observe the law itself, and that extends of course, to the legal obligations imposed by the LPA. It is regrettably the case that this respondent, by her conduct in failing repeatedly to respond to the s 443 notices, and indeed, by her lack of engagement in this disciplinary process, has manifested what I would describe as profound indifference to her status as a member of the legal profession.
- [19] The protection of the public demands, in the view of the Tribunal, that the respondent's name ought be removed from the roll of practitioners. The public needs to have confidence that the people who hold the privilege of the rank of legal practitioner for service of the community are people who understand and abide by the obligations that are imposed on them by law.
- [20] Finally, I should note that there is no reason why a costs order, as provided for by s 462 of the LPA, should not be made.
- [21] Accordingly, there will be the following orders of the Tribunal:
1. It is recommended that the name of the respondent, Michelle Rosena Beatty, be removed from the roll of legal practitioners of Queensland;
  2. The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed as if the matter were proceeding in the Supreme Court of Queensland.