

CITATION: *Legal Services Commissioner v Lindley* [2012] QCAT 673

PARTIES: Legal Services Commissioner
(Applicant)
v
Craig Anthony Lindley
(Respondent)

APPLICATION NUMBER: OCR094-12

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers; the Panel received written submissions from the parties and met to consider the matter on 4 December 2012

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
Assisted by:
Matthew Woods, Practitioner Panel Member
Kate Keating, Lay Panel Member

DELIVERED ON: 14 December 2012

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The Respondent, Craig Anthony Lindley, is publicly reprimanded.**
- 2. The Respondent, Craig Anthony Lindley, is ordered to pay a fine of \$7,000.00 to the Applicant within twelve (12) months.**
- 3. The Respondent, Craig Anthony Lindley, is ordered to pay compensation of \$200.00 to the Applicant for transmission to the complainant within thirty (30) days.**
- 4. The Respondent, Craig Anthony Lindley, is ordered to pay the Commissioner's costs assessed at \$2,000.00, within three (3) months of the date of this decision.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – QUEENSLAND – PROCEEDINGS IN TRIBUNALS – where the Respondent is an Australian legal practitioner – where the

Respondent was alleged to have directed a client of the firm he was employed by to make payment of legal fees into his personal bank account – where the Respondent was alleged to have created an invoice purporting to be from the employer firm – where an agreed statement of facts was filed setting out the particulars of the charges – where both the Applicant and the Respondent agreed that the conduct should be classified as professional misconduct – whether the conduct warrants the imposition of a pecuniary penalty

Legal Professional Act 2007, ss 418, 419
Queensland Civil and Administrative Tribunal Act 2009, s 32

Attorney General v Bax [1999] 2 Qd R 9
Legal Services Commissioner v Chadwick [2009] LPT 16
Legal Services Commissioner v Clair [2008] LPT 05
Legal Services Commissioner v Lim [2011] QCAT 291
Legal Services Commissioner v Ramsden [2006] LPT 10
Legal Services Commissioner v Sorban [2009] LPT 5

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* ('QCAT Act').

REASONS FOR DECISION

- [1] Mr Lindley, a solicitor admitted in 2004 and now aged 32, faces two charges under a discipline application brought by the Commissioner. Both involve an event in which he personally profited from work done in the course of his employment by taking a fee which, properly, should have been rendered by and paid to his employer.
- [2] The detail of the first charge is that, in the course of his employment with a firm of solicitors in 2009, he gave advice to a client of the firm and then asked her to deposit the sum of \$200.00 in payment of legal fees into his personal bank account. The client made that payment. The second is that, in relation to that incident, he created an invoice purporting to be from his employer showing both the firm's fee of \$200.00, and a receipt. Mr Lindley retained the \$200.00 and did not account to his employer for it.
- [3] He filed a response to the Commissioner's discipline application admitting the first charge, but asking that the second be dismissed. Subsequently,

however, after a compulsory conference in the Tribunal he and the Commissioner signed and filed a Statement of Agreed Facts in which he admitted the particulars of the second charge; and, subsequently, he filed written submissions in which he ‘... *accepted responsibility for the conduct subject to Charges 1 and 2 and (takes) full responsibility for the conduct*’.

- [4] Those submissions were filed following a direction from the Tribunal – made with the consent of both parties – that the matter would be heard and determined on the papers. The Tribunal considered submissions from both parties along with the agreed statement of facts and met to consider the matter on 4 December 2012.
- [5] The charges are to be considered under the *Legal Professional Act 2007* (‘LPA’) which contains two ‘key concepts’ relevant to matters of this kind. The first, called *unsatisfactory professional conduct* is defined in s 418 to include conduct of an Australian legal practitioner happening in connection with the practice of law which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner.
- [6] The second, called *professional misconduct* in s 419, is defined to include unsatisfactory professional conduct involving a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and conduct, whether happening in connection with practice of law or otherwise, which would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [7] The Commissioner contends, and Mr Lindley agrees, that the conduct should be classified as falling within the more serious category, *professional misconduct*. The Tribunal accepts that submission. These offences involved dishonesty on Mr Lindley’s part *vis-à-vis* both the client and his employer. Dishonesty on the part of a practitioner warrants this more serious categorisation.¹
- [8] The agreed facts are that a client contacted Mr Lindley by telephone seeking employment law advice. He provided that advice in his capacity as an employed solicitor. He then sent the client an email directing her to deposit the sum of \$200.00, in payment for the legal services, into his email bank account. He described that bank account as his ‘CBA Consultant Account’. The following day Mr Lindley created, and provided the client with, an invoice bearing what appeared to be an official number and purporting to be an invoice issued by his employer for the payment of \$200.00. He did not account to his employer for that sum.
- [9] The question of penalty falls to be considered, primarily, in the context of the need to protect the public; and, in a way that properly reflects principles of both general and personal deterrence².
- [10] Mr Lindley has no previous disciplinary findings against him and he has cooperated with the Commissioner. He has, until a few months ago

¹ *Legal Services Commissioner v Sorban* [2009] LPT 5 at 5.42; *Legal Services Commissioner v Ramsden* [2006] LPT 010 at 2; *Legal Services Commissioner v Lim* [2011] QCAT 291 at [18].

² *Attorney General v Bax* [1999] 2 Qd R 9, at 21 per Pincus J.

continued to work fulltime in the legal profession with no further complaint or disciplinary proceedings.

- [11] The individual submissions from the parties accept that an appropriate penalty must include a public reprimand, payment of the costs of the disciplinary proceeding, and a fine. The Tribunal agrees. The amount involved was small, and it was an isolated event in what appears otherwise to have been an unblemished career; but, it involves actual dishonesty for personal gain.
- [12] Previous cases in the Tribunal show that the decision whether to impose a fine and, if so, the amount of the penalty will be made after consideration of all the surrounding circumstances, including whether the dishonesty was for personal gain.
- [13] In *Legal Services Commissioner v Sorban*³ the practitioner falsely created an email to mislead his clients and the opposing party, with the motive of persuading them that certain documents had been provided to the opposing solicitor when, in truth, they had not. There was no personal benefit to the practitioner and no financial consequences. Mullins J found that the behaviour amounted to professional misconduct but ordered no more than that the solicitor be publically reprimanded and pay the Commissioner's costs. She observed that in the ordinary case professional misconduct involving dishonesty would not only attract a public reprimand but also the imposition of a pecuniary penalty. In the case before her she was persuaded, however, that the lawyer's behaviour involved a temporary lapse of judgment and that he remained acutely aware of the responsibility of being absolutely honest in all his dealings with clients and other practitioners.
- [14] Nor was a fine imposed in *Legal Services Commissioner v Chadwick* [2009] LPT 16, a case which involved the misrepresentation of employment records to obtain finance from a lending institution. Although the conduct involved dishonesty the Tribunal was persuaded not to impose a fine because of countervailing factors including the accepted pressures of an exceptionally heavy workload.
- [15] A fine was thought to be necessary and appropriate in *Legal Services Commissioner v Ramsden*⁴: the practitioner prepared and post-dated a document in order to avoid a small amount of stamp duty. He fully and promptly acknowledged his error and expressed contrition and remorse and he was reprimanded but, also, fined \$5,000.00.
- [16] In *Legal Services Commissioner v Clair*⁵ the practitioner was found guilty of three counts of fraud. He misappropriated over \$4,000 of client monies over a three month period, for personal benefit. He had already been sentenced in the Magistrates Court on the basis his name would be struck from the roll – as occurred in the Tribunal.

³ [2009] LPT 005.

⁴ [2006] LPT 10.

⁵ [2008] LPT 05.

- [17] *Legal Services Commissioner v Lim*⁶ the practitioner swore a false affidavit in an effort to avoid embarrassment in proceedings she had begun on behalf of a client. The offending acts involved no personal advantage save, perhaps, avoiding criticism from her client, or employer. The Tribunal imposed a public reprimand and a penalty of \$7,000 – observing, in its published reasons, that the offending was of a worse kind than in *Ramsden* and warranted a higher fine.
- [18] As in *Ramsden* the offending here involved troubling dishonesty towards the solicitor's employer (and the client) compounded by the creation of a false document to conceal that dishonesty. In that case the practitioner was relatively young and, like Mr Lindley, had no history of prior complaints or disciplinary matters and cooperated with the Commissioner. He also promptly and fully acknowledged his misconduct, and expressed remorse.
- [19] Mr Lindley's written submissions are not couched in terms evincing clear insight or remorse, but his conduct since discovery (including his conduct in these proceedings) provides a sufficiently clear indication that he understands and regrets his misconduct.
- [20] He argues for a fine of between \$1,000.00 and \$2,000.00, while the Commissioner contends the fine should approximate what was imposed in *Ramsden* (\$5,000.00) or *Lim* (\$7,000.00).
- [21] The particularly troubling aspect of the offending here is that it involved deceit for personal gain, albeit in a small amount. *Ramsden* also involved a small sum (\$44.85) but the practitioner was motivated by a desire to gain a benefit for the client, not himself.
- [22] The element of personal gain, while minor, warrants a fine signifying clear condemnation of dishonest behaviour involving an attempt to gain a benefit of that kind, and a pecuniary penalty reflecting both general, and personal deterrence. The care taken to conceal the misappropriation from both the employer and the client aggravates the nature of the offending. In the Tribunal's view, those elements and circumstances warrant a fine of the order of that imposed in *Lim*, ie \$7,000.
- [23] The Tribunal is cognisant that Mr Lindley is now unemployed and, following publication of this decision and the orders it imposes, may have difficulty finding employment. That is material, but it should not distract the Tribunal from formulating a penalty that properly reflects the seriousness of the misconduct and condemnation it should attract. A larger fine may also be addressed by allowing a longer period for payment, as Mr Lindley requests in his submissions.
- [24] In the course of investigations it has become apparent that the solicitor has not accounted to his employer for the \$200.00 he took. An order will be made requiring him to reimburse that sum.
- [25] The Commissioner also seeks costs, fixed at \$2,000.00 and Mr Lindley's written submissions concede an obligation to pay reasonable costs. He does not contend the amount claimed as unreasonable.

⁶ [2011] QCAT 291.

- [26] He seeks time – twelve months – to pay the fine. The Commissioner has not objected and, in light of the possible consequences of publication of this decision upon the practitioner's prospects, allowing time to pay is not unreasonable.
- [27] The orders will be that Mr Lindley is publicly reprimanded; ordered to pay a fine of \$7,000.00 to the applicant within twelve months; also ordered to pay compensation of \$200.00 to the Commissioner for transmission to the complainant within thirty days; and, ordered to pay the Commissioner's costs assessed at \$2,000.00, within three months.