

CITATION: *Legal Services Commissioner v Wood* [2012] QCAT 185

PARTIES: Legal Services Commissioner
(Applicant)
v
Anthony Scott Wood
(Respondent)

APPLICATION NUMBER: OCR202-11

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers; Panel met to consider the matter on 12 March 2012

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
Assisted by:
Ms Bronwyn Cushing-Sullivan
Practitioner Panel Member
Dr Margaret Steinberg
Lay Panel Member

DELIVERED ON: 4 May 2012

DELIVERED AT: Brisbane

ORDERS MADE: **1. That the Respondent's name be removed from the local Roll.**
2. That the Respondent pay the Applicant's costs, fixed at \$1,500.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the Respondent was convicted of two counts of fraud and one count of forgery and sentenced to 10 years imprisonment – where the Applicant submits, and the Respondent does not disagree, that this conduct should be categorised as professional misconduct – where the Applicant submits, and the Respondent does not disagree, that the Respondent be removed from the Roll of Solicitors – where the Applicant seeks an order for costs, and the Respondent does not oppose that order

Legal Profession Act 2007, ss 419, 420,
Schedule 2

*Queensland Civil and Administrative Tribunal
Act 2009*, s 32

*A Solicitor v Counsel of the Law Society of New
South Wales* (2004) 78 ALJR 310
Attorney-General v Bax [1999] 2 Qd R 9
LSC v Bryant [2005] LPT 3
LSC v Clair [2008] LPT 5
LSC v Wherry [2009] LPT 22
LSC v Williams [2005] LPT 6
New South Wales Bar Association v Cummins
[2001] NSWCA 284

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); the panel members met to consider the parties' submissions on 12 March 2012.

REASONS FOR DECISION

- [1] Mr Wood was admitted to practice as a solicitor in 1984. On 10 February 2011 he was convicted, on his own plea, of two counts of fraud and one count of forgery, and sentenced to 10 years imprisonment.
- [2] The events which led to these convictions occurred between 2003 and 2008, when he held a practising certificate as a solicitor in Queensland and was the managing partner of a law firm in Brisbane.
- [3] His fraud and forgery involved dishonestly applying funds in his firm's trust account, and dishonestly obtaining loans from financiers to cover up his misappropriations. As his Honour Judge Noud observed when sentencing Mr Wood, his conduct involved taking money from one client, and then from another in order to pay the first. Large sums of money were involved; the Legal Practitioners Fidelity Guarantee Fund has paid over \$1.245 million to clients who were defrauded.
- [4] The LSC submits, and Mr Woods does not disagree, that his conduct should be categorised as '*professional misconduct*' under s 419 of the *Legal Profession Act 2007* (LPA), which defines that term to include conduct, within or outside the practice of law, that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice. Section 420 goes on to provide that certain conduct is, by definition, capable of constituting professional misconduct and includes conduct for which there is a conviction for a serious offence. A '*serious offence*' is defined in Schedule 2 of the LPA as an indictable offence against the law of the Commonwealth, or any jurisdiction.

- [5] Mr Wood's conduct involved, initially at least, personal benefit to him – he first misappropriated funds from an estate bank account – and might be said in that sense to involve personal rather than professional misconduct; but, as the detailed history of the many subsequent unlawful transactions presented to Judge Noud show, the misconduct was inextricably interwoven with his practice as a solicitor.
- [6] In *A Solicitor v Counsel of the Law Society of New South Wales*¹, the High Court dealt with the distinction between personal and professional misconduct, and pointed out that the latter does not simply mean misconduct by a professional person; and that, even though the misconduct is not engaged indirectly in the course of professional practice, it may be so connected to the practice as to amount to professional misconduct; and, further, that even where no professional misconduct occurs, the behaviour of a professional person may demonstrate qualities of a kind that require a conclusion that the person is not a fit and proper person to practice.
- [7] Mr Wood's misconduct occurred in the course of his professional practice, and involved the misappropriation of his clients' funds. He was the trustee of those funds, and abused that position. The LSC submits, and Mr Wood does not dispute, and the Tribunal accepts, that the conduct for which he was convicted demonstrates qualities of a kind that can only lead to the conclusion that he is not a fit and proper person to engage in legal practice.
- [8] As to an appropriate sanction, the LSC submits, and, again, Mr Wood does not oppose the orders, that he be removed from the Roll of Solicitors.
- [9] The test for removal of a legal practitioner from the Roll involves considering whether the practitioner should any longer be held out as fit to practice, or whether he is a fit and proper person to be entrusted with the important duties and grave responsibilities of a solicitor.²
- [10] In *LSC v Wherry*³ the solicitor had been convicted before a Magistrate of the offence of forging a document with intention to defraud. The document was an authority regarding costs, purporting to be signed (but not in fact signed) by a client. Fryberg J found the respondent guilty of professional misconduct, and accepted that the risk that the public could not adequately be protected if the lawyer was allowed to continue in practice justified an order that he be removed from the local Roll.⁴
- [11] The present Chief Justice observed in *LSC v Williams*⁵, the systematic deceit that characterised the solicitor's fraudulent transactions in that case were:

...glaringly incompatible with the utter integrity which must mark those held out by the court to the public as fit to practice as...legal practitioners. Deliberate fraud of this order involved an obvious affront to that necessary integrity. Because that integrity rests at the root of proper legal practice it

¹ (2004) 78 ALJR 310.

² *Attorney-General v Bax* [1999] 2 Qd R 9, at 12.

³ [2009] LPT 22.

⁴ See, also, *LSC v Clair* [2008] LPT 5, and *LSC v Bryant* [2005] LPT 3.

⁵ [2005] LPT 6.

must be acknowledged that the respondents behaviour bespeaks her unfitness to practice and, second, that her fraud in these commercial dealings was so closely connected to the mores of legal practice that had amounted to professional misconduct.

- [12] The legal profession has long required the highest standards of integrity.⁶ As the LSC has submitted, Mr Wood's conduct in misappropriating clients' funds and dishonestly obtaining loan funds from financiers clearly violates and falls short, to a substantial degree, of the standards of professional conduct observed or approved by members of the profession of good repute and competency, and are serious breaches of honesty and trust that go to the heart of a solicitor's professional obligations. In the circumstances the only appropriate order is to remove Mr Wood's name from the local Roll.
- [13] The LSC also seeks costs, fixed at \$1,500. Again, Mr Woods does not oppose that order and it will be made.

⁶ *New South Wales Bar Association v Cummins* [2001] NSWCA 284.