

CITATION: *Legal Services Commissioner v Voll* [2016] QCAT 96

PARTIES: Legal Services Commissioner
(Applicant/Appellant)
v
Paul Michael Voll
(Respondent)

APPLICATION NUMBER: OCR029-15

MATTER TYPE: Occupational Regulation matters

HEARING DATE: 2 March 2016

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Mrs Joanne Collins, Legal panel member
Dr Margaret Steinberg, Lay panel member

DELIVERED ON: 9 March 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The respondent's name be removed from the local Roll of Practitioners.**
- 2. The respondent is to pay the applicant's costs assessed on a standard basis, on the Supreme Court Scale under the *Uniform Civil Procedure Rules 1999 (Qld)* in the manner that the costs would be assessed were the matter in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – UNSATISFACTORY PROFESSIONAL CONDUCT OR PROFESSIONAL MISCONDUCT – where the respondent was convicted of fraud in the District Court in 2006 – where the respondent pleaded guilty to the charge and was sentenced to a term of imprisonment – where the Legal Services Commissioner bought a disciplinary application against the respondent for committing a serious

offence pursuant to s 420 of the *Legal Profession Act 2007* (Qld) – where the respondent does not contest the charge – where the respondent has previously been the subject of disciplinary findings in the Tribunal – where the respondent was put on notice – whether the respondent’s conduct amounts to professional misconduct – nature of appropriate penalty

Legal Profession Act 2007 (Qld) ss 419, 420, 420(1)(c)(i), 456, 462(5)
Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 92, 93
Uniform Civil Procedure Rules 1999 (Qld)

Legal Services Commissioner v Paul Michael Voll [2008] LPT 1
Queensland Law Society v Bax [1999] 2 QdR 9
Queensland Law Society v Whitman [2003] QCA 438
R v Voll [2014] QCA 170

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Sarah Lane instructed by the Legal Services Commissioner

RESPONDENT: No appearance for, or on behalf of, Paul Michael Voll

REASONS FOR DECISION

The Charges

- [1] The Legal Services Commissioner ('LSC') alleges that on dates between 22 January 2006 and 30 December 2006, Paul Michael Voll engaged in conduct for which he was convicted in the District Court at Brisbane on 29 May 2014 of a serious offence. This offence is particularised in the LSC's application as fraud – dishonest application of property of another subject to a trust direction or condition value of over \$5,000.00.
- [2] The particulars also assert that Mr Voll was sentenced to imprisonment for a period of 2 years and 6 months with an order that the term of imprisonment be suspended after 3 months and that Mr Voll not commit another offence punishable by imprisonment within a period of 30 months, if to avoid being dealt with for the suspended term of imprisonment.

The Hearing

- [3] The Principal Registrar gave notice of the time and place for the hearing in this matter to each party in the proceedings.¹
- [4] Mr Voll did not attend the hearing. The Tribunal is satisfied that Mr Voll was given notice of the hearing under section 92 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act').
- [5] Pursuant to section 93 of the QCAT Act, the Tribunal proceeded to hear and decide the matter in Mr Voll's absence.

Background

- [6] Mr Voll has not responded to the disciplinary application despite being served with the application by Darielle Glenna Campbell on 11 March 2015.² That service took place when Mr Voll attended at the offices of the LSC.

- [7] Mr Voll had forwarded an email to Ms Campbell in the following terms:

"...Just confirming our telephone discussion of today.

I will not be contesting the LSC's application to have my name removed from the Roll. As I stated I am prepared to abide by the Tribunal's decision and indeed am prepared to execute consent orders to have my name removed from the Roll if that is appropriate.

I also confirm that I am prepared to waive any formal requirement for service and will accept service by electronic copy forwarded to this email address. If you deem it appropriate, I'm also prepared to attend at LSC's offices next week to personally accept service of the application.

Please let me know if there's anything further I can do to assist the LSC to expedite the conclusion of this matter."³

- [8] The LSC has tendered the transcript of the sentencing remarks in the matter of *The Queen v Voll*⁴. This transcript is dated 29 May 2014.

- [9] His Honour Judge Noud provides the following factual background:

- a) Mr Voll acted for purchasers in land transactions. There were 4 transactions involved. From monies paid by purchasers, Mr Voll diverted certain amounts and channelled those amounts into companies over which he had control. This was not contested.⁵

¹ Pursuant to the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 92.

² Affidavit of Darielle Glenna Campbell sworn 11 March 2015.

³ Affidavit of Darielle Glenna Campbell sworn 11 March 2015, exhibit 1, email from Paul Voll to Darielle Campbell sent 17 February 2015 at 4:23pm.

⁴ [2014] QCA 170, Transcript of proceedings dated 29 May 2014, filed 19 February 2014.

⁵ Ibid, page 2, line 25.

b) The overall sum involved was \$77,000.00.⁶

[10] Judge Noud makes the following observations:

a) The matter is so serious that there had to be some time in actual custody.

b) Mr Voll was the solicitor at the time of the offending. The role of a solicitor is an important role within the community. There were those who relied upon Mr Voll. When their trust was breached it was a very serious matter.⁷

Discussion

[11] Section 420 of the *Legal Profession Act 2007* (Qld) ('LPA') provides that conduct for which there is a conviction for a serious offence is capable of constituting unsatisfactory professional conduct or professional misconduct.⁸

[12] Legal practitioners must act with honesty and integrity. This conduct is fundamental to the role of a legal practitioner and essential to the proper administration of justice. The relationship between a legal practitioner and the client is one where the client relies upon the practitioner to act in the client's best interests and this is fundamental to the nature of such a relationship.

[13] The conduct which led to the conviction involved, as Judge Noud correctly observed, was a breach of the client's trust which was a very serious matter.

[14] The conduct demonstrated a disregard for the respondent's professional obligations.

[15] In the circumstances, the conduct was a substantial failure to maintain reasonable standards of competence and diligence and so amounts to professional misconduct as that term is used in section 419 of the LPA.

Sanction

[16] Upon the finding that the conduct amounted to professional misconduct, the Tribunal can make any order it thinks fit including those orders set out in section 456 of the LPA.

[17] When considering the appropriate sanction, the aim is not to punish the practitioner but to protect the public from unsatisfactory practitioners.

[18] Mr Voll has been the subject of previous disciplinary proceedings.

⁶ *R v Voll* [2014] QCA 170, Transcript of proceedings dated 29 May 2014, filed 19 February 2014, page 2, line 26.

⁷ *Ibid*, page 2, lines 17-18.

⁸ *Legal Profession Act 2007* (Qld) s 420(1)(c)(i).

- [19] On 8 February 2008, Mr Voll was publicly reprimanded and ordered to pay a penalty of \$20,000.00.⁹ In that case Mr Voll was dishonest in his dealings before the Building Tribunal and also failed to act with diligence and competence with respect to a building dispute. His conduct was found to be professional misconduct.
- [20] In that decision, Chief Justice de Jersey observed:
- The respondent is nevertheless very much on notice now, that should he commit any further breach of significance, there will be a compelling case for barring him from practice, in the short or long term. But at this stage, though his misconduct was plainly unacceptable, it does not demonstrate an unfitness to practice.¹⁰
- [21] Reference was made in the decision to previous matters where Mr Voll had been before the Solicitors Complaints Tribunal twice. On 26 March 2007, he was found guilty of unsatisfactory professional conduct in the administration of his trust account, and a reprimand was administered publicly.¹¹ On 6 October 2014, Mr Voll was found guilty on four charges of failing to comply with statutory notices.¹²
- [22] The LSC submits that the appropriate order is for the respondent's name to be removed from the local Roll.
- [23] In terms of the question of whether the name of a legal practitioner should be removed from the local Roll, the issue is whether the practitioner should continue to be held out as fit to practice. The time for determining the question of fitness is at the time of the hearing, the question being whether the practitioner is '*a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to a solicitor.*'¹³
- [24] The conduct of the practitioner in this instance, and in the previous instance which was determined in 2008, involved dishonesty. This dishonesty is incompatible with the honesty and integrity which is required of a person who is a fit and proper person to be entrusted with the important duties and grave responsibilities of a solicitor.
- [25] In the circumstances, the appropriate order is that Mr Voll's name be removed from the local Roll of Practitioners.
- [26] It is noted that Mr Voll also indicated that he believes this is the appropriate outcome.¹⁴

⁹ *Legal Services Commissioner v Paul Michael Voll* [2008] LPT 1.

¹⁰ *Ibid*, at 65.

¹¹ *Ibid*, at 55.

¹² *Ibid*, at 56.

¹³ *Queensland Law Society v Bax* [1999] 2 QdR 9; *Queensland Law Society v Whitman* [2003] QCA 438 at 36.

¹⁴ Affidavit of Darielle Glenna Campbell sworn 9 February 2016, Exhibit 1, email of Paul Voll to Darielle Campbell sent 17 February 2015 at 4:23pm.

Costs

- [27] Upon a person being found to have engaged in professional misconduct the Tribunal must make an order requiring that person to pay costs unless the Tribunal is satisfied that exceptional circumstances exist.
- [28] No exceptional circumstances exist in this case.
- [29] The Commissioner has sought an order for costs to be assessed on a standard basis pursuant to section 462(5) of the LPA. In the circumstances, it is ordered that the respondent pay the applicant's costs assessed on a standard basis, on the Supreme Court Scale under the *Uniform Civil Procedure Rules 1999 (Qld)*, in the manner that the costs would be assessed were the matter in the Supreme Court of Queensland.