QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Forward* [2018] QCAT 130
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **GRANT REUBEN FORWARD** (respondent)
APPLICATION NO/S:	OCR154-17
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	18 May 2018
HEARING DATE:	15 May 2018
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President Assisted by: Mr Geoffrey Gunn Dr Margaret Steinberg AM
ORDERS:	**1. It is recommended that the name of Grant Reuben Forward be removed from the roll of persons admitted to the legal profession in Queensland.** **2. The respondent shall pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis on the Supreme Court Scale under the *Uniform Civil Procedure Rules* 1999 (Qld) in the manner that the costs would be assessed if the matter were in the Supreme Court of Queensland.** **3. The matter of the application by Jack Barker for a compensation order under the *Legal Profession Act* 2007 be adjourned to a date to be fixed for further directions.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – whether respondent should be removed from roll of persons admitted to legal profession due to conviction of fraud – whether the respondent should pay the applicant's costs

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDICT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent failed to respond to commissioner's notice

Legal Profession Act 2007 (Qld), s 452, s 435, S 706, s 456, s 462

REASONS FOR DECISION

[1] On 20 July 2017, the applicant filed a discipline application pursuant to s 452 of the *Legal Profession Act* 2007 (Qld) ("the Act").

[2] The respondent, Grant Reuben Forward, was admitted as a barrister of the Supreme Court of Queensland on 27 April 1993. He held a practising certificate as a barrister until 30 June 2011 and has not renewed his practising certificate since.

[3] The discipline application arises out of an investigation undertaken by the Bar Association of Queensland ("BAQ") pursuant to s 435(2) of the Act, following a complaint made by a client of the respondent. The BAQ recommended that the applicant bring the present application against the respondent in relation to the conduct which was the subject of the complaint.

[4] As will appear, the conduct in question by the respondent was a case of fraud. In accordance with the requirements of s 706(2) of the Act, the applicant referred the matter to the Queensland Police Service. Investigations by the police led to the respondent being charged with one count of fraud. After a trial by jury in the District Court of Queensland, the respondent was found guilty and on 11 May 2017 was sentenced to three and a half years imprisonment.

[5] After that conviction, the applicant commenced the present discipline application, which preferred two charges against the respondent:

(a) Charge 1 – having being convicted of a serious offence;

(b) Charge 2 – breach of s 543(1) of the Act, by the respondent failing to respond to a notice issued by the Commissioner requiring the production of the respondent's client file and bank statements.

[6] In his response to the discipline application, the respondent admitted charge 1 and also admitted several of the particulars under charge 2, but disputed some of the other particulars under charge 2.

[7] In the course of a directions hearing before me on 24 October 2017, in which the respondent represented himself, the respondent had confirmed that he did not contest the charges or the sanctions sought by the applicant. However, the response he then filed did put a number of matters in dispute. Subsequently, at a further directions hearing on 12 December 2017, the respondent informed the Tribunal that he would not be contesting any part of the discipline application.

[8] The relevant factual background can be derived both from the uncontested particulars of the present charges and also from the sentencing remarks of Bowskill QC DCJ (as her Honour then was) on 11 May 2017.

[9] The complainant, Mr Jack Barker, had been injured in a motor vehicle accident in 1997 when he was aged about 4. For many years thereafter, and with the assistance of his mother, Mr Barker had been pursuing a claim for compensation from the insurer of the vehicle, which had been driven by the mother. Several firms of solicitors had been engaged to act for Mr Barker. In 2010, Mr Barker's mother was referred to the respondent and he agreed to act in the matter for Mr Barker on a direct brief basis.

[10] Her Honour recorded the following matters in her sentencing remarks:

> Consistent with the jury's' verdict, you [the respondent] engaged in conversations with Jack Barker and his mother, conveying the impression that you could get a much higher figure for compensation than a previous barrister had told them they would be awarded, that it wouldn't take very long to finish the case and that your fees would be $4000. Leanne Barker paid that to you early on. You then proceeded to do some work in relation to this matter.
>
> It went to a mediation in February 2011. You also asked Jack Barker to pay you some more money before that, and he paid you another $1500. The matter settled at the mediation for an amount of $115,000 plus costs to be agreed. That amount of money was reduced as a result of a payment that had to be made to Medicare and a payment that was made to Trilby Misso for their fees, an amount of $25,000. The balance of $89,300 was deposited directly into your account to be held for Jack Barker.
>
> It is also consistent with the jury's that they accepted the evidence of Jack and his mother, and that includes the recording of conversations in which you indicated at the mediation that the money that would be paid to Jack for damages would be his money, what he would receive in his pocket, and would not be reduced further by costs.

[11] That sum of $89,300 was paid to the respondent's account. He did not pay any of that money to the complainant.

[12] As already noted, the respondent was convicted of fraud in relation to this conduct. In her sentencing remarks, the learned sentencing judge made the following further observations:

> You have shown no remorse at all for your conduct, indeed, have not accepted the conduct in any way, including in making your sentencing submissions to me today.
>
> …
>
> The conduct involves a gross breach of trust on your part. You were retained on a direct brief to act for Jack Barker in this matter. That places a heavy burden on a barrister to act to the highest standards of honesty and integrity; and you breached that fundamentally. That young man was entitled to be able to place his trust in you, and you have let him down in the most significant way.

[13] Her Honour referred to statements made by the complainant's mother that the complainant 'has absolutely no faith whatsoever in the justice system now as a result

of what's happened to him; he doesn't trust lawyers and it's made him feel like he doesn't matter'. Her Honour described the fact that this impression had been conveyed to a young man as 'appalling', saying that the respondent had brought the profession and himself into disrepute.

[14] A little later in her sentencing remarks, her Honour observed:

> I just can't communicate to you strongly enough, Mr Forward, how fundamentally appalling it is for a legal practitioner to have breached the trust placed in him by a client to such a fundamental degree. There are many members of our community who don't think very much of lawyers. And circumstances like this only serve to reinforce what I would like to think is a misconception in the majority of cases. But as I have said, you bring the profession and yourself into disrepute.

[15] So far as charge 1 is concerned, the Tribunal respectfully agrees with and adopts the learned sentencing judge's characterisation of the respondent's conduct. This was a blatant case of dishonest conduct. It is the antithesis of the standard of honesty and integrity which members of the public can expect of legal practitioners. A finding of professional misconduct is clearly warranted. The gravity of the breach is such as to strike at the heart of the respondent's fitness and propriety to continue to hold office within the legal profession. It is clear that the appropriate sanction is for the Tribunal to make an order under s 456(2)(a) recommending that the name of the respondent be removed from the local roll of practitioners.

[16] For completeness, the Tribunal notes that charge 2 relates to a failure by the respondent to provide information required by the applicant pursuant to a notice delivered on 16 March 2012 under s 543(1) of the Act. The respondent comprehensively failed to comply with that notice, and the Tribunal makes a formal finding that the respondent is also guilty of charge 2. Given the seriousness of the conduct under charge one, and the orders which will be made as a consequence, it is unnecessary to make any further orders arising out of charge 2.

[17] The applicant seeks its costs of the discipline application.

[18] On 23 January 2018, the respondent wrote to the Tribunal confirming that he did not oppose an order containing a recommendation that his name be removed from the roll. In relation to costs, however, the respondent submitted:

(a) He had already indicated to the Tribunal that he was not opposing the orders sought;

(b) He has been sentenced to 'a not inconsiderable term of imprisonment';

(c) He acknowledges that his name will be removed from the roll;

(d) An order as to costs would amount to a further type of punishment;

(e) The respondent has no resources to satisfy a costs order and would, or may, be forced into bankruptcy 'which hardly accords with any prospects of rehabilitation'.

[19] By s 462(1) of the Act, the Tribunal is required to make a costs order against a person whom it is found to have engaged in professional misconduct unless the Tribunal is 'satisfied exceptional circumstances exist'.

[20] None of the matters pointed to by the respondent constitute exceptional circumstances. His term of imprisonment is the punishment imposed for him having engaged in the serious criminal conduct of defrauding his client. A costs order is not a form of punishment but is a means to enable the regulator to recover some of the costs associated with performing its statutory function of bringing a discipline application in circumstances where a finding of professional misconduct is made. There are no exceptional circumstances which would warrant a departure from the mandatory terms of s 462(1).

[21] Finally, the Tribunal notes that Mr Barker has given notice of intention to seek a compensation order pursuant to s 464 of the Act. It will be necessary for further consideration of that aspect to be adjourned to a date to be fixed to enable, amongst other things, the respondent and the applicant in the present discipline application to be given the opportunity to make whatever submissions might be considered appropriate in response to Mr Barker's application.

[22] For these reasons, the orders of the Tribunal are as follows:

1. It is recommended that the name of Grant Reuben Forward be removed from the roll of persons admitted to the legal profession in Queensland.

2. The respondent shall pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis on the Supreme Court Scale under the *Uniform Civil Procedure Rules* 1999 (Qld) in the manner that the costs would be assessed if the matter were in the Supreme Court of Queensland.

3. The matter of the application by Jack Barker for a compensation order under the *Legal Profession Act* 2007 be adjourned to a date to be fixed for further directions.