

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Jazayeri* [2024] QCAT 106

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

SEYED (SAM) JAZAYERI
(respondent)

APPLICATION NO/S: OCR174-23

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 29 February 2024 (*ex tempore*)

HEARING DATE: 29 February 2024

HEARD AT: Brisbane

DECISION OF: Justice Brown

ORDERS:

1. The respondent's conduct, the subject of charge 1 of the amended application, is declared to be professional misconduct;
2. It is recommended that the name of the respondent, Seyed Jazayeri, be removed from the roll of legal practitioners in Queensland; and
3. The respondent shall pay the Commissioner's costs of and incidental to the application to be assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent failed to respond to written notices 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 the respondent has committed unsatisfactory professional conduct or professional misconduct – whether to recommend the name of the respondent be removed from the roll of legal practitioners in Queensland.

Legal Profession Act 2007 (Qld) ss 429, 436, 437, 443, 452, 456

Adamson v Queensland Law Society Incorporated [1990] 1 QD R 498

Legal Services Commissioner v Beatty [2019] QCAT 45

Legal Services Commissioner v Bui [2018] QCAT 424

Legal Services Commissioner v Mouritz [2023] QCAT 325

Legal Services Commissioner v Shand [2018] QCA 66

APPEARANCES & REPRESENTATION:

Applicant: A Angeli, instructed by the Legal Services Commissioner

Respondent: No appearance

REASONS FOR DECISION

- [1] The applicant, the Legal Services Commission (**LSC**) filed an amended disciplinary application (**application**) on 5 September 2023 by which it seeks disciplinary orders under s 456 of the *Legal Profession Act 2007* (Qld) (**LPA**). The respondent, Mr Jazayeri, did not appear.
- [2] The Tribunal is satisfied Mr Jazayeri was served with the amended application and supporting material in accordance with the order of the Tribunal made on 6 February 2024. Further it is satisfied he was served with a notice of hearing pursuant to directions made by the Tribunal on 6 February 2024. The matter was called, and he did not appear. In the circumstances, the Tribunal determined that it was appropriate to proceed with the hearing, notwithstanding the respondent's non-appearance.

The Charge

- [3] The application charges the respondent that on 1 November 2022 and thereafter, he without reasonable excuse, failed to comply with a requirement given by notices issued pursuant to s 443 LPA.
- [4] The particulars of the charge are supported by the affidavit of Bradley Mark Fitzgerald sworn 22 September 2023.
- [5] The respondent was an Australian legal practitioner within the meaning of s 6(1) LPA at all material times to which this application relates. According to the affidavit of Mr Bradley Fitzgerald, the applicant was admitted on 24 June 2014. He was a sole practitioner and principal of the law practice SJ Legals from 17 January 2018 to 17 September 2021 and 15 October 2021 to 30 June 2022 and thereafter, was employed by Rostron Carlyle Rojas Lawyers from 1 July 2022 to 28 October 2022. He held an employee practising certificate issued by the Queensland Law Society from 1 July 2022 to 30 June 2023.
- [6] As to the history of the proceedings, they have been set out in the affidavit of Mr Fitzgerald. Complaints were made to the Office of the Migration Agents Registration Authority (**OMARA**) in 2019, which are said to relate to the respondent's conduct as a migration agent in 2017 and 2018. The complaints appeared to be referred to the LSC by OMARA on 15 June 2021. This appears to have been done pursuant to s 319 of the *Migration Act 1958* (Cth), which was amended in 2019 to provide that complaints about Australian legal practitioners providing immigration assistance were

to be investigation by the relevant legal disciplinary authority, not OMARA. Submissions were made on behalf of the LSC, which satisfied the Tribunal that the referred matter was a complaint, pursuant to section 429(5) of the LPA, and was properly the subject of an investigation, under section 436 of the LPA.

- [7] The LSC wrote to Mr Jazayeri on 10 December 2021 pursuant to s 437 of the LPA, informing him that an investigation was being undertaken into his conduct the subject of the complaints which had been referred to the LSC in relation to Dr Turner and her partner Mr Patanga. I note that the LSC obtained a declaration from Dr Turner, indicating she wished the LSC to investigate the complaint.
- [8] Mr Jazayeri was requested to provide his submissions in relation to the complaints made by Dr Turner and her partner. He subsequently requested an extension of time to respond until 2 February 2022. He stated that he had been under an impression that the matter was resolved by OMARA.
- [9] The LSC granted an extension of time for him to respond to 2 February 2022.
- [10] On 18 February 2022, the respondent forwarded a letter to the LSC enclosing various emails which were undated or which had had the dates removed. He denied the allegations made and provided various responses to the matters raised.
- [11] On 17 August 2022, the LSC requested that Mr Jazayeri provide complete copies of the emails from the client file, which would include the dates of those emails, by 24 August 2022. Mr Jazayeri responded by email that he would provide the emails on 26 August 2022, but he did not do so.
- [12] A notice was sent by the LSC to Mr Jazayeri on 30 September 2022 pursuant to s 443(1)(a)(i) LPA, requesting a response by 14 October 2022 in relation to the request to provide complete copies of the emails. The LSC stated that s 443(2) LPA obliged him to comply with the requirement and further, that s 443(3) provided that he may be dealt with for professional misconduct if he failed to respond within the statutory timeframe. The statutory timeframe was a period of 14 days.¹ A further letter was sent on 18 October 2022, notifying Mr Jazayeri pursuant to s 443(3) LPA that he may be dealt with for professional misconduct under s 443(4) LPA if he failed to comply with the 30 September 2022 notice by 1 November 2022.
- [13] Mr Jazayeri did not respond to either the 30 September 2022 notice or the 18 October 2022 follow-up notice.
- [14] A further letter was sent by the LSC on 8 December 2022, which notified Mr Jazayeri that unless he had a reasonable excuse, the LSC was of the view that pursuant to s 443(4)(a) he would be taken to have committed professional misconduct for the non-compliance with notices issued pursuant to s 443 of the LPA. The letter invited him to make submissions to the LSC as to any reasonable excuse that he had for not complying with the notices issued pursuant to s 443 by 11 January 2023. No response was provided by Mr Jazayeri.
- [15] Pursuant to s 443(4)(a) of the LPA, if a notice is given under s 443(3) and the failure to reply continues for a 14-day period:

¹ *Legal Profession Act 2007 (Qld) s 443(3) (LPA).*

the Australian legal practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period....

Section 443(4)(b) provides that:

the commissioner may apply to the tribunal for an order in relation to the charge that the practitioner has committed professional misconduct as stated in paragraph (a) as if the application were an application in relation to a complaint against the practitioner.

- [16] The application filed pursuant to s 452 of the LPA alleges that the respondent was guilty of professional misconduct due to his noncompliance with the s 443 notice.
- [17] The particulars of the charge are supported by the affidavit of Mr Bradley Fitzgerald. Based on the evidence before it, the Tribunal is satisfied to the requisite standard that Mr Jazayeri failed to comply with a requirement given by notices issued pursuant to s 443 LPA for a further fourteen days after the notice was given on two occasions and has offered no reasonable excuse for his non-compliance. The charge is established.

Characterisation of Conduct

- [18] The Tribunal must characterise the conduct the subject of the charge. Sections 418 and 419 of the LPA define unsatisfactory professional conduct and professional misconduct, although not exclusively.
- [19] The conduct is to be assessed by reference to those provisions and the common law test.² In *Adamson v Queensland Law Society Incorporated*, Thomas J articulated the test for professional misconduct as follows:³

The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.

- [20] The LSC contends the conduct, in failing to comply with the notices, constitutes professional misconduct.
- [21] The finding of professional misconduct is consistent with the terms of the LPA, and particularly section 443(4), which provides that, in the absence of a reasonable excuse for not complying with the requirement under the notices provided, pursuant to section 443, the conduct is taken to be professional misconduct. The intent of s 443 LPA is consistent with the importance of a legal practitioner recognising his or her obligations under the LPA and expectation that he or she will comply with the law. In *Legal Services Commissioner v Bui* the Tribunal stated:⁴

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

- [22] In the present case, despite initially responding to the LSC notice under s 437 of the LPA, the respondent did not comply with the notices subsequently issued under s

² *Legal Services Commissioner v Redmond* [2018] QCAT 231 at [27].

³ [1990] 1 QD R 498 at 507.

⁴ [2018] QCAT 424.

443(3) of the LPA, requiring him to provide the information requested. He failed to respond to the further invitation to offer any reasonable excuse for his failure to comply, despite being given the opportunity by the Commission to do so. Given the respondent's disregard of his professional obligations under the LPA to respond to such notices on a number of occasions with which he was obliged to comply under s 443(2) LPA, and the terms of s 443(4) LPA, his conduct is properly characterised as professional misconduct. It involved conduct falling short to a substantial degree of the standard of professional conduct observed or approved by the members of the profession of good repute and competency and that characterisation is provided for under the terms of s 443(4).⁵

Sanction

- [23] Having determined that the appropriate characterisation of the conduct is professional misconduct (based on the particulars of the charge) the Tribunal must then determine the appropriate sanction that should be imposed in relation to the offending conduct. In doing so, it can have regard to subsequent events in deciding upon an appropriate disciplinary order.⁶
- [24] The primary role of proceedings is protective in nature not punitive. As observed in *Legal Services Commissioner v Madden (No.2)*,⁷ in determining the appropriate sanction, the Tribunal should primarily have regard to the protection of the public and maintenance of professional standards. Personal and general deterrence are, however, relevant to the protection of the public.
- [25] Pursuant to s 456 LPA there are a broad range of orders that may be made by the Tribunal. In the present case, the LSC submits that the appropriate order for the Tribunal to make is an order recommending that the respondent's name be removed from the local roll, given the conduct the subject of the charge and his continued non-engagement with the LSC and the Tribunal. It submits that the respondent was aware that the LSC was investigating the complaint and of the disciplinary application before Tribunal and that his lack of engagement demonstrates "something close to contempt for the practitioner's obligations under the Act."
- [26] An order recommending that a legal practitioner's name be removed from the roll will generally only be made when the probability is that the practitioner will be permanently unfit for practise. Removing a practitioner from the roll was described by McMurdo JA in *Shand* as:⁸
- a way of identifying the character of the practitioner as so indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the roll.
- [27] In the present case, it is relevant that the respondent has failed to engage with these proceedings. No response to the application was provided, no explanation provided for his conduct nor has he appeared at the hearing before the Tribunal. While he briefed solicitors, they were only involved for a short period of time and subsequently withdrew.

⁵ See *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 507; LPA s 419.

⁶ See *Legal Services Commissioner v Shand* [2018] QCA 66 at [20].

⁷ [2019] 1 Qd R 149 at [122].

⁸ *Legal Services Commissioner v Shand* [2018] QCA 66 at [57].

[28] The fact is that the Tribunal has nothing before it which indicates any explanation for the respondent's conduct which demonstrates professional indifference and disregard of his obligations under the LPA. Compliance with legal obligations by a legal practitioner is a fundamental requirement of being a legal practitioner and one of the incidents of the privilege of legal practise.⁹ As was observed by McMurdo JA in *Shand*, referring to Pincus JA in *Bax*:¹⁰

the community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts and the public is prejudiced.

[29] In the present case, there is only one charge that has been laid against the respondent. However, the only sensible inference that can be made from the respondent's lack of engagement is that he is indifferent to his status as a member of the legal profession and the importance of his compliance with the provisions of the LPA. That has been further entrenched by the conduct of the respondent in failing to properly engage with these disciplinary proceedings. The history of the proceedings contained on the QCAT file show that notwithstanding he initially retained lawyers Meridien lawyers and, through them, consented to directions on 30 August 2023, his lawyers were subsequently granted leave to withdraw on the record and other than an address for service being filed, the directions were not complied with by the respondent. He did not respond to a Tribunal direction made on 19 October to provide a response to the application or an affidavit explaining his non-compliance. Despite directions made on 11 November 2023 that he attend a directions hearing on 30 November 2023 he failed to appear.

[30] The respondent's conduct is, as was described by the Tribunal in *Legal Services Commissioner v Beatty*,¹¹ consistent with profound indifference to his legal obligations.

[31] The authorities of *Legal Services Commissioner v Beatty*¹² and *Legal Services Commissioner v Mouritz*¹³ confirm that public confidence and the protection of the public requires that people who hold the position of a legal practitioner are people who understand and abide by the obligations that are imposed upon them by the law.

[32] In the present case, unlike *Beatty* and *Mouritz*, there is only one charge which relates to the lack of compliance with two notices issued pursuant to s 443 of the LPA. The *Legal Services Commissioner v Beatty* involved a great number of failures to respond, as well as subsequent disengagement from the process. *Legal Services Commissioner v Mouritz* involved only one charge of the failure to respond to the notice issued under s 443, but that matter involved another charge for which the respondent was found guilty of unsatisfactory professional conduct, and was said to be entwined with the failure to comply with the s 443 notices. However, like *Beatty* and *Mouritz*, the respondent here has shown continued non-engagement and disregard of his obligations under the LPA and obligation to respond to the Tribunal since August 2022.

⁹ *Legal Services Commissioner v Beatty* [2019] QCAT 45 at [10] and [17].

¹⁰ *Legal Services Commissioner v Shand* [2018] QCA 66 at [55].

¹¹ [2019] QCAT 45.

¹² [2019] QCAT 45 at [14].

¹³ [2023] QCAT 325 at [227].

- [33] The Tribunal has considered carefully the question of an appropriate sanction to impose and a number of alternatives, including orders directing the respondent cannot apply for a practising certificate for a period of time, which bears some similarity to the sanction imposed in the case of *Bui*, where the practicing certificate of the person in that case was cancelled. However, the present case, unlike *Bui*, does not involve the respondent having made any attempt to engage with the Tribunal to demonstrate that he is fit to practice now or in the future.
- [34] The respondent's conduct in failing to respond to the notices of the LSC and to the Tribunal goes to the core of his obligations as a lawyer to comply with the law. In the circumstances of the present case, given the complete disregard for his legal obligations in responding to the section 443 notices and the directions made by the Tribunal, the respondent has shown he is permanently unfit for practice and that protection of the public and general deterrence demands that the respondent's name be removed from the roll of practitioners as a result of his professional misconduct. As was said by McMurdo JA in *Shand*, the community needs to have confidence that only fit and proper persons are able to practice as lawyers.
- [35] In making this determination, the Tribunal is aware that Mr Jazayeri has only been admitted for some 10 years. It should be said that every case turns on its own facts. While noncompliance with s 443 notices under the LPA is serious, not every noncompliance will necessarily result in a removal of a legal practitioner from the roll. The appropriate sanction must be determined having regard to all relevant circumstances in any case.
- [36] As to the question of costs, s 462(1) of the LPA provides that the Tribunal must:
- ... make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.
- [37] In the present case, the charge has been established and there are no exceptional circumstances that have been placed before the Tribunal justifying an order departing from s 462(1) LPA.

Orders

- [38] The orders of the Tribunal are therefore that:
1. the respondent's conduct, the subject of charge 1 of the amended application, is declared to be professional misconduct;
 2. it is recommended that the name of the respondent, Seyed Jazayeri, be removed from the roll of legal practitioners in Queensland; and
 3. the respondent shall pay the Commissioner's costs of and incidental to the application to be assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.