

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Stevenson* [2021] QCAT 275

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

v

CRAIG LEONARD STEVENSON
(respondent)

APPLICATION NO/S: OCR083-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 12 August 2021 (*ex tempore*)

HEARING DATE: 27 July 2020 (adjourned, part-heard)
12 August 2021

HEARD AT: Brisbane

DECISION OF: Justice Daubney
Assisted by:
Mr Geoffrey Sinclair
Dr Susan Dann

ORDERS:

1. **In respect of each of Charges 2, 3, 4, 5 and 6, there is a finding that the Respondent engaged in professional misconduct.**
2. **The Respondent is publicly reprimanded.**
3. **The Respondent shall pay a fine of \$5,000.**
4. **The Respondent's application for renewal of his practising certificate in 2022 must include a copy of these reasons, and:**
 - (a) **evidence that the Respondent has continued with the mentoring program; and**
 - (b) **a report from the Respondent's treating psychiatrist and/or his treating psychologist confirming that the Respondent is in a therapeutic treating relationship, such report to be obtained within six (6) months prior to the application.**
5. **The Respondent's application for renewal of his practicing certificate in 2023 must include a copy of these reasons, and:**

- (a) **evidence that the Respondent has continued with the mentoring program, if it was determined by the mentor that further mentoring was required beyond 2022; and**
 - (b) **a report from the Respondent’s treating psychiatrist and/or his treating psychologist confirming that the Respondent is in a therapeutic treating relationship, such report to be obtained within six (6) months prior to the application.**
- 6. The Respondent shall pay the Applicant’s standard costs of and incidental to this discipline application, such costs to be assessed as if this were a proceeding before the Supreme Court of Queensland.**

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where Respondent was a sole practitioner – where Respondent failed to respond to a section 443 notice from the Applicant on five occasions – where Applicant filed discipline application in the Tribunal – whether Respondent engaged in professional misconduct or unsatisfactory professional conduct – where Respondent faced significant personal and professional issues at time of offending – where Respondent has engaged in treatment for mental health issues – where Respondent has received mentoring from Queensland Law Society – where Tribunal must have regard to the protection of the public when determining sanction – whether the Respondent ought be publicly reprimanded

Legal Profession Act 2007 (Qld), s 419, s 443, s 462

Legal Services Commissioner v Bui [2018] QCAT 424

APPEARANCES & REPRESENTATION:

Applicant: P Prasad, instructed by Legal Services Commissioner
Respondent: G Cranny, instructed by Gilshenan & Luton Legal Practice

REASONS FOR DECISION

- [1] By the amended discipline application brought under the *Legal Profession Act 2007 (Qld)* (“LPA”), the Applicant, the Legal Services Commissioner, proceeds against the Respondent solicitor, Craig Leonard Stevenson, on five charges. Each of those

charges alleges a failure on the part of the Respondent to comply with a notice issued under s 443(3) of the LPA.

- [2] The facts underlying the charges are not in dispute and indeed have been admitted by the Respondent, and it is clear that there will be findings that in each of the instances referred to in the discipline application, the Respondent failed to comply with notices given to him under s 443(3) of the LPA. The import of those failures is manifestation at the time of a lack of cooperation by the Respondent with the regulatory authority.
- [3] The seriousness of that sort of conduct has previously been noted in this Tribunal, including in cases such as *Legal Services Commissioner v Bui* (“*Bui*”).¹ The Tribunal regards a failure by a practitioner to engage properly and in accordance with the legislative requirements with the regulator as a serious matter.
- [4] In this case, there were five instances occurring over a period between June 2018 and May 2019. The Respondent has given evidence by way of explanation of the circumstances in which he found himself around this time. That evidence provides an explanation but is not exculpation. I will deal briefly with that evidence shortly.
- [5] Given the repeated nature of the failures, however, it is clear that the Respondent’s conduct across this period and under these charges involved substantial and consistent failures to reach, or keep, a reasonable standard of confidence and diligence. His conduct ought, therefore, be characterised as professional misconduct.
- [6] The matter first came on before the Tribunal on 27 July 2020. Some material was put before the Tribunal at that stage seeking to explain the circumstances of stress and pressure under which the Respondent was labouring at the time of his breaches. It was, however, necessary for that material to be augmented by the Respondent giving oral evidence before the Tribunal on that occasion.
- [7] As the transcript of the Respondent’s evidence reveals, a picture emerged of a sole practitioner who was labouring under sustained and significant personal and professional pressures and who was simply not coping. His evidence revealed a person who, whilst well-intentioned, was lacking any proper administrative structure, or any other form of scaffolding which would support him in the pursuit of his professional practice. Of further concern to the Tribunal at that time were the details that emerged of his supervision, or lack of supervision, of junior solicitors who were employed in the course of his practice.
- [8] Accordingly, the hearing on the last occasion was adjourned to enable the Respondent to investigate the availability both of assistance for mental health issues that may have been required, and to ascertain the availability, through the Queensland Law Society, of appropriate mentorship to enable the Respondent to function more efficiently in legal practice.
- [9] It is to the credit of the Respondent that he grasped all of those opportunities and has engaged fully, in terms of psychiatric and psychological assessment, counselling, and rehabilitation. He has also had the benefit of extended mentoring by a senior and experienced solicitor who has, from the report tendered before the Tribunal, taken a

¹ [2018] QCAT 424.

deep interest in ensuring the professional development and wellbeing of the Respondent.

- [10] It is not necessary to set out the details of the various stressors and pressures faced by the Respondent at the time of the conduct in question. It is sufficient to note that they ranged from:
- (a) conventional stressors associated with operating as a sole practitioner and seeking to do the best for clients;
 - (b) significant health issues that were being faced by both the Respondent personally, and by members of his close family; and
 - (c) other external stressors which had an impact upon the Respondent's life, and the life of close members of his family.
- [11] The very strong impression that the Tribunal had at the time the Respondent gave evidence in July 2020 is that it was dealing with a man who, to put it colloquially, felt as if the walls were closing in on him. It was also clear to the Tribunal that the failures to respond to the regulatory authority could directly be explained by the mental state in which the Respondent found himself at the time.
- [12] In that context, it should be noted that there is not, and never has been, any suggestion that the Respondent is not a fit and proper person to practice. There is no suggestion that he is a person who is not caring for, and caring of, his clients and those with whom he engages. Rather, this was a situation of a person who was under particular stress and who was not coping.
- [13] Following the hearing on 27 July 2020, the Respondent, to his credit, grasped the opportunity for rehabilitation with both hands. The Tribunal notes that he has received, and continues to receive, mental health treatment from both a psychiatrist and a psychologist. Reports from those practitioners are before the Tribunal. Each of them talk to his mental state before the time of the consultations with the mental health professionals – that is, his mental state during the time of these particular failures. The psychiatrist, for example, speaks to the level of anxiety being suffered by the Respondent between 2018 and 2019 to the point of it involving an adjustment disorder, secondary to the accumulation of several psychosocial stressors. It was also thought that that had progressed to the point of major depression.
- [14] The psychiatrist has formulated, and is implementing, a treatment plan which involves both regular medication and psychotherapy sessions with a psychologist. In a recent report, the psychologist has indicated that the Respondent has improved in his psychological wellbeing with reduced anxiety and improved management of attentional difficulties.
- [15] On the professional side, the Respondent has been receiving mentoring assistance from a senior counsellor of the Queensland Law Society since February of this year. Several reports from that mentor are before the Tribunal. It is sufficient to note that the mentor has commented very favourably on the improvements in systems employed by the Respondent in his own practice, and in his office more generally, to ensure a high standard of professional service. It is also noted, in relation to the more junior solicitors employed in the Respondent's office, that they have both recently completed the practice management course.

- [16] In short, the Tribunal is pleased to see that there has been a very significant improvement both in the Respondent's mental capacity to function as a diligent practitioner, and in the steps and processes that he is following in his professional practice to ensure not merely appropriate compliance with the minimum standards, but to pursue the highest possible professional standards in the course of his practice.
- [17] The Respondent has no disciplinary history. As I have already said, there is no suggestion of a lack of fitness or impropriety on the part of the Respondent, nor is there any suggestion of dishonesty in respect of the matters that gave rise to the disciplinary charges. The Tribunal has also had regard to his personal and family circumstances.
- [18] It is trite to note that the purpose of these disciplinary proceedings is not punitive but rather, protective of the public. Protection of the public in the circumstances of this case involves several elements.
- [19] First, there is the seriousness of the matters of professional misconduct which have been found against the Respondent. It is a significant component of a solicitor's duties that they not only comply with legislative requirements cast on them, but that they cooperate fully with the relevant regulatory bodies. As was said in *Bui*, when a practitioner receives a section 443 notice from the regulatory body, that notice is not going to go away.² They must respond to it, and a failure to respond is a serious matter.
- [20] In this case, there were repeated failures to respond. In considering the appropriate sanction in respect of those repeated failures, the Tribunal is cognisant of the fact that it is not merely a matter of signalling to the Respondent personally that these infractions were serious. There is also the question of general deterrence by which the message is sent to the profession that the Tribunal regards failures such as this seriously.
- [21] Accordingly, the Tribunal accepts the submissions by the parties that it is appropriate for the Respondent to be publicly reprimanded, and that he pay a fine of \$5,000.
- [22] There is, however, in the circumstances of this case, further questions of protection of the public to be involved to take account of the Respondent's particular circumstances.
- [23] We have already seen the consequences for the Respondent personally and professionally of not availing himself of external assistance to cope with the pressures of practice and life. It is, as I have said, to his credit that he has actively addressed those matters by seeking and obtaining medical and professional support. The Tribunal is of the view that it would be appropriate for the next couple of years for that support to continue.
- [24] Accordingly, the Tribunal will be ordering that at the time the Respondent applies for his practising certificates in 2022 and 2023, he will need to produce evidence of his ongoing mentoring, and psychiatric and psychological treatment.
- [25] Finally, the Tribunal notes that no argument is put to seek to avoid the mandatory costs order required by s 462 of the LPA.

² [2018] QCAT 424, [19]-[22].

[26] Accordingly, there will be the following orders:

1. In respect of each of Charges 2, 3, 4, 5 and 6, there is a finding that the Respondent engaged in professional misconduct.
2. The Respondent is publicly reprimanded.
3. The Respondent shall pay a fine of \$5,000.
4. The Respondent's application for renewal of his practising certificate in 2022 must include a copy of these reasons, and:
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