SUPREME COURT OF QUEENSLAND

CITATION:	*Legal Services Commissioner v Podmore* [2006] LPT 006
PARTIES:	**LEGAL SERVICES COMMISSIONER** **(applicant)** **v** **MICHAEL LEE PODMORE** **(respondent)**
FILE NO:	S7701 of 2005
DELIVERED ON:	25 October 2006 (earlier judgment – 23 August 2006)
DELIVERED AT:	Brisbane
HEARING DATE:	22 May 2006; 23 May 2006; submissions 21 June 2006, 7 July 2006; further submissions 6 October 2006, 18 October 2006
TRIBUNAL MEMBER:	de Jersey CJ
PANEL MEMBERS:	Ms S Purdon Dr S Dann
FINDINGS:	The orders made are these: 1. under s 280(2)(a) of the *Legal Profession Act* 2004 (Qld), that the name of the respondent be removed from the local roll; 2. under s 286(1), that the respondent pay the costs of the applicant as agreed, or failing agreement, as assessed under the Uniform Civil Procedure Rules 1999 (Qld).
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – SOLICITOR AND CLIENT – DUTIES AND LIABILITIES TO CLIENT – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – conflict of interest – exploitation of vulnerable client – bankruptcy – lack of candour *Legal Profession Act* 2004 (Qld), s 280, s 286 *Attorney-General v Bax* [1999] 2 Qd R 9, cited *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, cited *Council of the Queensland Law Society Inc v Roche* [2004] 2 Qd R 574; [2003] QCA 469, CA No 3263 of 2003, 31 October 2003, cited *Queensland Law Society Inc v A Solicitor* [1989] 2 Qd R 331, cited

Smith v New South Wales Bar Association (No 2) (1992) 176 CLR 256, cited
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279, cited

COUNSEL: B W Farr for the applicant
S R Lewis for the respondent

SOLICITORS: Legal Services Commission for the applicant
The respondent appeared on his own behalf

[1] **de JERSEY CJ:** On 23 August 2006, the Tribunal found the respondent guilty of ten charges of professional misconduct, and characterised four as serious examples. The Tribunal then published comprehensive reasons for those findings.

[2] The present issue is what consequential orders should be made. The applicant seeks an order, under s 280(2)(a) of the *Legal Profession Act* 2004 (Qld), removing the respondent's name from the roll and in addition, under sub s (4)(a), an order that the respondent pay a penalty of $10,000. The applicant also seeks an order that the respondent pay the applicant's costs.

[3] The respondent does not oppose, but in fact invites, his removal from the roll, but opposes the imposition of a pecuniary penalty. Notwithstanding the position adopted by the respondent, it falls to the Tribunal to reach an independent judgment on the issue.

[4] The primary objective is protection of the public. See *Smith v New South Wales Bar Association (No 2)* (1992) 176 CLR 256, 270; *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, 202; and *Queensland Law Society Inc v A Solicitor* [1989] 2 Qd R 331, 340. Where the aggregation of relevant circumstances is sufficiently grave, that will warrant denying a practitioner the right to practise. In less serious cases, the appropriate response may be suspension for a period, or a requirement that the practitioner undergo training courses, or pay compensation or pecuniary penalties. Section 280 sets out a range of possible responses.

[5] This is a case plainly warranting striking off. A variety of seriously disturbing features is present: dishonesty, exploitation, greedy self-interest, remorselessness and lack of insight. The applicant has demonstrated the court can no longer hold the respondent out as a person fit and proper to practise as a solicitor. The respondent should no longer be permitted to do so.

[6] The Tribunal's findings published on 23 August 2006 show that over an extended period, the respondent engaged in a course of conduct involving the exploitation of an extremely wealthy client, but vulnerable for lack of understanding of the English language and Australian culture and systems, in order to advance the respondent's own financial interests. That aside, the respondent also from time to time, in various ways, behaved deceitfully. In addition, as emerged during the hearing, the respondent regrettably lacks insight into the unacceptability of what he did, and is remorseless. (Lack of awareness in a solicitor of the nature of his or her obligation to the client will generally itself bespeak unfitness to practise: *Council of the Queensland Law Society Inc v Roche* [2004] 2 Qd R 574, 587.)

[7] There is real cause for concern that if left to continue to practise, the respondent may again fail to meet the high ethical standards rightly expected of persons granted that privilege. Leaving the respondent within the ranks of the practising profession would seriously erode public perceptions, and perceptions within the profession, of the ethical standards the Supreme Court expects of those it holds out as fit to practise, those persons it may confidently present as competent and ethical custodians of the legal affairs which citizens choose to repose into the trust of others.

[8] The respondent should be struck off. His disgraceful misconduct necessitates that (cf. *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279).

[9] As to costs, there is no exceptional circumstance warranting departure from the position otherwise ordained by s 286(1).

[10] As to the imposition of a financial penalty, permissible in addition to removal because of s 280(5), Mr Farr, for the applicant, made this submission:

> "The Respondent has sought to improperly profit from his association with his client. It would seem that greed has played a major role in the Respondent's behaviour … a financial penalty will, in addition to the removal of his name from the roll, act as a further deterrent to other practitioners who may wish to gain financially from their clients in breach of their professional obligations. Such a penalty is consistent with the aims of the legislation by virtue of its deterrent aspect. That is of particular relevance in this case as the Respondent no longer practises as a solicitor. Consequently, the impact of the removal of his name from the roll is diminished as is the aspect of general deterrence."

[11] Striking off is a serious consequence of great potential import for the practitioner, and carries its own deterrent effect (*Attorney-General v Bax* [1999] 2 Qd R 9, 22). It is fairly arguable that the gravity of this exploitation does – especially where the respondent does not currently practise – warrant the Tribunal's sending an additional signal as to the glaring unacceptability of such misconduct.

[12] But Mr Lewis, for the respondent, submits that ordering the payment of a pecuniary penalty, in addition to striking off, would be unduly punitive. He relies on these matters, taken from his written submission:

> "(a) That after his admission as a solicitor in 1980 the Respondent practised for some 17 years as a sole practitioner without a client complaint.
>
> (b) From 1992 the Respondent suffered significant personal difficulties commencing with the incarceration of his brother in that year. This resulted in him taking on the responsibility of his brother's family as well as his own.
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> (c) In 1994 the Respondent suffered the death of his sister and became the carer of her four children, one of whom was handicapped. The Respondent still has indirect responsibility of this child who is in care.
>
> (d) These events put a significant financial strain on the Respondent and in 1995 a one off tax assessment was too

much for him to pay. He was however allowed to continue to practise as a solicitor.

(e) In 1998 the Respondent's brother suicided after his release from prison. This had a significant effect on the Respondent's nephew who again became financially dependent upon the Respondent.

(f) The financial strain brought stress to the Respondent's relationship and this was exacerbated by the sudden death of the Respondent's step-son in Spain in 1999.

(g) In 2002 the Respondent lost his nephew and his mother not long apart.

(h) It was at this time that the Respondent was sued by his client and his failure to defend this suit led to his bankruptcy and his ceasing to practise.

(i) The Respondent is resident and works in the relatively small area of the Gold Coast. The Respondent works in the commercial consultancy industry and accordingly news of his removal from the roll of solicitors would be widespread in his industry. This will have, it is submitted, a negative impact on the Respondent's already precarious financial position and will bring further hardship to the Respondent's family.

(j) As is submitted by the Applicant, the Respondent will in all probability have to pay the Applicant's costs which will be a significant financial impost."

[13] I accept in all these circumstances, the payment of a pecuniary penalty should not additionally be ordered.

[14] The orders made are these:

1. under s 280(2)(a) of the *Legal Profession Act* 2004, that the name of the respondent be removed from the local roll;
2. under s 286(1), that the respondent pay the costs of the applicant as agreed, or failing agreement, as assessed under the Uniform Civil Procedure Rules 1999.