

CITATION: *Legal Services Commissioner v Budgen (No 2)*
[2016] QCAT 484

PARTIES: Legal Services Commissioner
(Applicant/Appellant)
v
Rodney Budgen
(Respondent)

APPLICATION NUMBER: OCR153-11

MATTER TYPE: Occupational Regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Ms Megan Mahon, Legal panel member
Dr Margaret Steinberg, Lay panel member

DELIVERED ON: 22 December 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The respondent's name is removed from the local Roll of Legal Practitioners.**
- 2. 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.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where the respondent has been found to have engaged in professional misconduct on a prior occasion – where further submissions were ordered in relation to sanction and costs – where the applicant sought the imposition of a fine –

whether the nature of the offences warrant a finding that the practitioner's name be removed from the local roll – whether the conduct warrants an order in favour of the applicant in relation to costs

Legal Profession Act 2007 (Qld) s 462(1)
Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32
Uniform Civil Procedure Rules 1999 (Qld)

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498
Attorney-General v Bax [1999] 2 Qd R 9
Legal Services Commissioner v Budgen [2011] QCAT 223
Legal Services Commissioner v King (No 2) [2013] QCAT 558
Legal Services Commission v Petschler [2015] QCAT 284
Legal Services Commission v Rowell [2013] QCAT 397
Southern Law Society v Westbrook (1910) 10 CLR 609
Legal Services Commissioner v Urban [2013] QCAT 521

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('QCAT Act').

REASONS FOR DECISION

Sanction

- [1] This is not the first finding of professional misconduct against the respondent. On 24 May 2011, he was found guilty of professional misconduct, in that he failed to comply with his statutory obligation to make superannuation payments on behalf of an employee.¹ The amount involved was \$17,252.20, which, together with costs of \$1,500.00, remains unpaid. There is no indication that those amounts will ever be repaid.
- [2] In this instance, the respondent has failed to refund a significant sum of money namely \$28,727.01 into his trust account and has failed to amend previous invoices to reflect the correct value of the professional costs owing to him from the estate.

¹ *Legal Services Commissioner v Budgen* [2011] QCAT 223.

- [3] The respondent's actions over the extended period of time demonstrate that he is not a fit and proper person to be entrusted with the important duties and grave responsibilities of a solicitor.²
- [4] In *Legal Services Commissioner v King (No 2)*³ the practitioner failed to provide an itemised bill of costs, drew trust moneys without authority, failed to honour an undertaking to counsel, and failed without reasonable excuse to comply with a notice issued by the Commissioner. It was ordered that her name be removed from the solicitors' roll.
- [5] A comparable case, in which an order was made removing the practitioner's name from the local roll, is that of *Legal Services Commissioner v Urban*.⁴
- [6] In *Legal Services Commission v Petschler*⁵ the respondent failed to maintain reasonable standards of competence and diligence, failed to comply with an order of the Tribunal, breached section 443(3) of the Act, and was convicted of a tax offence. No such offence occurred in the present case, but Mr Budgen's treatment of the superannuation entitlements of a long-serving employee is comparable. In that case, an order was made removing the practitioner's name from the local roll.
- [7] The misconduct in the case of *Legal Services Commission v Rowell*⁶ is arguably less serious than in this case, but the practitioner's name was nonetheless removed from the roll.
- [8] In the circumstances, the respondent's name should be removed from the local Roll of practitioners.
- [9] The Commissioner seeks, in addition to removal of the respondent's name from the Roll, an order for a fine in the extremely wide range of \$4,000.00 to \$46,000.00, plus costs.
- [10] Mr Budgen has provided evidence (not challenged by the Commissioner) which describes his financial position. This indicates that his income is on par with his living expenses and in addition he has debts to the Commonwealth Bank and also to the Child Support Agency and his former employee. He will also have a liability to pay costs and the sum of \$28,727.01 to Thomas Burt, William Burt, Margaret Walker Clelland and Mary Robertson. In other words it seems Mr Budgen has no prospect of paying any fine which is imposed.
- [11] The object of sanctions in disciplinary proceedings is not to punish the practitioner but to protect the public.

² *Attorney-General v Bax* [1999] 2 Qd R 9 at 12; *Southern Law Society v Westbrook* (1910) 10 CLR 609 at 612; *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 507.

³ [2013] QCAT 558.

⁴ [2013] QCAT 521.

⁵ [2015] QCAT 284.

⁶ [2013] QCAT 397.

- [12] The interests of the public are adequately protected if Mr Budgen's name is removed from the local Roll of Practitioners so that he can no longer act as a legal practitioner on behalf of clients.
- [13] The fact that Mr Budgen's name is removed from the Roll of Legal Practitioners will act to deter other practitioners from becoming involved in similar conduct to that of the respondent.
- [14] If the respondent makes an application for readmission at a later date, payment of all moneys owing by Mr Budgen will be a relevant factor.

Costs

- [15] Upon a finding that a practitioner has been engaged in conduct which is either unsatisfactory professional conduct or professional misconduct the Tribunal must make an order requiring the practitioner to pay costs, unless the Tribunal is satisfied that exceptional circumstances exist.⁷
- [16] In this case, no exceptional circumstances exist.
- [17] 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.

⁷ *Legal Profession Act* 2007 (Qld) s 462(1).