QCAT
Queensland Civil and Administrative Tribunal

CITATION:	*Legal Services Commissioner v Puryer* [2012] QCAT 48
PARTIES:	Legal Services Commissioner (Applicant/Appellant) v Terence Robert Puryer (Respondent)
APPLICATION NUMBER:	LPD011-09
MATTER TYPE:	Occupational regulation matters
HEARING DATE:	4 May 2011; and, on the papers 13 September 2011
HEARD AT:	Brisbane
DECISION OF:	**Justice Alan Wilson, President** Assisted by: **Mr G Sinclair** (Practitioner Panel Member) **Dr S Dann** (Lay Panel Member)
DELIVERED ON:	2 February 2012
DELIVERED AT:	Brisbane
ORDERS MADE:	**1. Charge 1 is dismissed;** **2. Charges 2 and 3 are upheld;** **3. The respondent's name is to be removed from the roll; and,** **4. It is further ordered that the respondent pay the applicant's costs of and incidental to the second and third charges; and that, for the purpose of determining those costs:** **a. The applicant will, within 28 days, file and serve written submissions concerning the amount of its costs, and an affidavit showing their method of calculation; and,** **b. The respondent will file and serve any submissions and affidavits in reply within 28 days thereafter.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS –

PROFESSIONAL MISCONDUCT – where the Commissioner filed a disciplinary application relating to three charges contending that the respondent misled the Supreme Court of Queensland and failed to meet his obligation of frankness and candour to the Supreme Court – where respondent contested the charges – where Tribunal dismissed charge one – where Tribunal found the respondent deliberately misled the Supreme Court of Queensland in relation to charge two – where the Tribunal found respondent failed to meet his obligation of frankness and candour in relation to charge three – appropriate penalty

Legal Profession Act 2007, ss 5, 417, 452, 462

Council of the Queensland Law Society Inc v Wakeling [2004] QCA 42 *applied*
Council of the Queensland Law Society v Wright [2001] QCA 58 *applied*
Legal Services Commissioner v Mullins [2006] LPT 012 *cited*
Legal Services Commissioner v Voll [2008] LPT 001 *cited*
Puryer v Webb & Ors [2008] QCA 246 *discussed*

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Ms T Thomson of Counsel representing the Legal Services Commissioner

RESPONDENT: Mr Puryer in person

REASONS FOR DECISION

[1] Three charges are brought against Mr Puryer in a *discipline application*[1] originally commenced in the Supreme Court on 6 October 2009: that on two occasions on 13 December 2007 he misled the Supreme Court of Queensland (in the person of Daubney J); and, that on that day he failed to meet his obligation of frankness and candour to the Supreme Court.

[2] Although Mr Puryer does not hold a current practicing certificate from the Queensland Law Society and was not in practice as a solicitor in December 2007 (and, in the proceedings before Daubney J, appeared for himself as a party in those proceedings), he is amenable to the discipline application because he was still at that time an *Australian Lawyer*[2] and Chapter 4 of the *Legal Profession Act 2007* (LPA) applies the complaint

1 *Legal Profession Act 2007*, s 452.
2 *Legal Profession Act 2007*, s 5(1).

and disciplinary provisions of that legislation to a person's conduct '*… while they were Australian lawyers*'.[3]

[3] It is also to be noted, in connection with Chapter 4, that it has two *key concepts*[4]*,* called *unsatisfactory professional conduct* and *professional misconduct*. The Commissioner accepts that because Mr Puryer was acting in a private capacity in the proceedings before Daubney J, this is not a case in which there could be a finding of the first kind – but contends that all three charges amount to *professional misconduct*.

The background to the charges

[4] The proceedings before Daubney J had a rather complex history. They arose out of Mr Puryer's relationship with another person, and their shared obligations as tenants in residential premises under a 12 month lease beginning on 2 February 2006. The lease contained a term that each of them could, by notice in writing, exercise an option to renew the lease for a further 12 months.

[5] As explained in a decision of the Court of Appeal which was the genesis of the disciplinary action against Mr Puryer (*Puryer v Webb & Ors* [2008] QCA 246), the relationship ended in acrimonious circumstances in mid 2006, and on 12 July the co-tenant offered to pay to the letting agent of the lessor an amount representing 40% of the rental payable for the unexpired balance of the lease – an offer which reflected, the Court of Appeal said, the circumstance that up to that time she had contributed 40% to the outgoings for the house.

[6] On the same day, however, Mr Puryer purported to exercise the option to renew the lease from 3 February 2007 to 2 February 2008. His co-tenant notified Mr Puryer that she would not consent to any renewal of the lease. He remained in occupation of the house.

[7] The co-tenant then commenced proceedings in the Small Claims Tribunal seeking to be released from her obligations under the lease on the basis of excessive hardship: she alleged that she was adversely affected by a medical condition which was being exacerbated, she also alleged, by the stress of living with Mr Puryer. That was Small Claims Tribunal claim No 4011 of 2006.

[8] On 28 July 2006 the Small Claims Tribunal made an order 'removing' the co-tenant from the lease. The order was made without notice to Mr Puryer. On the same day, the co-tenant paid 40% of the rent payable until 2 February 2007 to the lessor's leasing agent.

[9] Subsequently, in February 2007, the lease was terminated on the grounds of rental arrears in different Small Claims Tribunal proceedings (No 0450 of 2007) between the letting agent, and Mr Puryer.

[10] Some time earlier (on 26 August 2006) Mr Puryer had commenced proceedings in the Supreme Court for judicial review of the first decision of

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[3] *Legal Profession Act 2007*, s 417(1).
[4] *Legal Profession Act 2007*, ch 4 pt 4.2.

the Small Claims Tribunal 'removing' his former co-tenant from the lease. He sought to have that order quashed, or reconsidered. A directions hearing took place before Muir J on 22 December 2006, by which time Mr Puryer had obtained the co-tenant's consent to abide the orders of the Court and, with one qualification, take no further part in the proceedings. Muir J ordered that the co-tenant produce some documents to Mr Puryer but, otherwise, she was granted leave to withdraw – with the reservation that her right to be heard on the question of costs was preserved.

[11] In February 2007 Mr Puryer amended that proceeding in the Supreme Court to include a claim for relief arising out of the second order of the Small Claims Tribunal, made in that month, terminating the lease.

[12] Almost a year passed before Mr Puryer then, on 12 December 2007, filed an amended application in the Supreme Court seeking an order that the co-tenant indemnify him for one half of the rent, outgoings and services under the Residential Tenancy Agreement. He served that application and an associated affidavit on the co-tenant late on 12 December but did not, the Court of Appeal found, draw her attention to the significance of the new claim for relief against her which, as the Court said, *'… was distinctly inconsistent with the spirit, if not the letter, of the contract reflected in the consent order (of Muir J) of 22 December 2006'*[5].

[13] The co-tenant did not appear on 13 December 2007 when Mr Puryer's application came on for hearing before Daubney J. The transcript shows that Mr Puryer handed the Court a list of material which he was to read, but did not draw his Honour's attention to a letter of 31 July 2006 exhibited to two of his own affidavits in the list. The letter was from the letting agent to Mr Puryer and referred to the co-tenant's payment, in advance, of 40% of the rent for the balance of the term until February 2007.

[14] In its decision the Court of Appeal sets out a lengthy passage containing an exchange between Daubney J and Mr Puryer which, the Court of Appeal concluded, showed that Mr Puryer did not inform the judge of the payment.

[15] On 13 December 2007 Daubney J made a number of orders setting aside the two decisions of the Small Claims Tribunal and directing that the co-tenant indemnify Mr Puryer against, and pay him one half of, each of the rent, outgoings and services paid or payable under the tenancy agreement of 25 January 2006.

[16] As the Court of Appeal observed *'… it is inconceivable that his Honour would have made (that order) if he had been informed that, in fact, (the co-tenant) had paid 40% of the rent payable for the balance of the original term, being the percentage which she considered was agreed between Mr Puryer and herself'*[6].

[17] The fact that the order he was being asked to make, and the circumstances in which he was being asked to make it, gave Daubney J some concern is apparent from an immediately following order his Honour

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5 *Puryer v Webb & Ors* [2008] QCA 246, [11].

6 *Puryer v Webb & Ors* [2008] QCA 246, [15].

made: that his order itself must be served personally on the co-tenant, and that the operation of the order requiring her to pay one half of the rent, etc would be stayed until 14 days after personal service on her, during which time she could apply to have the orders varied on two days written notice to Mr Puryer.

[18] The co-tenant did not take that opportunity but, instead, applied to Dutney J on 27 February 2008 for an order setting aside Daubney J's order, on the basis it was made in her absence.

[19] The transcript of those later proceedings, also referred to extensively in the Court of Appeal decision, included comments by Dutney J that *'… what was said and not said by Mr Puryer before Daubney J was apt to have the effect of suggesting that (the co-tenant) had not discharged any of her obligations under the lease after 28 July 2006*'[7].

[20] That said, although Dutney J expressed the view that the affidavit upon which Mr Puryer had relied in the hearing before Daubney J seemed to be plainly misleading, he did not make a finding that Mr Puryer had deliberately set out to mislead the Court. The judge did, however, go on to make an order for costs on an indemnity basis against Mr Puryer.

[21] In its decision the Court of Appeal addressed the question whether or not Daubney J had been misled and whether or not any misleading, if it occurred, was deliberate.

[22] First, the Court observed that Dutney J had not concluded that Mr Puryer had deliberately mislead Daubney J but, rather, that the judge had been misled by the position put before him as to the co-tenant's discharge of her obligations under the lease; that, as the transcript showed, Daubney J did not appreciate that the co-tenant had made payments of that kind; and that, whether or not Mr Puryer deliberately set out to mislead Daubney J, the fact that he achieved the result was sufficient ground to set aside the critical order.[8]

[23] The Court of Appeal also observed that Daubney J was misled as to the extent of notice given to the co-tenant as to Mr Puryer's claim for indemnity from her.[9]

[24] The Court of Appeal said (at paragraph [31] of its Reasons) that while it was not necessary in order to dispose of the appeal to come to a view as to whether Mr Puryer deliberately misled Daubney J, the Court should record its concern that '*… to say the least, Mr Puryer did not seem to understand that a lawyer's obligations of candour to the Court, whose officer he is, are not discharged by leaving it to the Court to plough through a bundle of papers in order to discover relevant material adverse to this case. There are, we think, grounds for the investigation by the Legal Services Commissioner of Mr Puryer's conduct before Daubney J*'.

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7 *Puryer v Webb & Ors* [2008] QCA 246, [18].
8 *Puryer v Webb & Ors* [2008] QCA 246, [29].
9 *Puryer v Webb & Ors* [2008] QCA 246, [30].

Disciplinary proceedings in the Supreme Court, and in QCAT

[25] The disciplinary proceeding has moved slowly in the Supreme Court, where it began, and in QCAT. In the tribunal Mr Puryer applied at an early stage for an order striking out part of a lengthy affidavit relied upon by the Commissioner. That application was refused, with reasons, on 25 August 2010. The matter then went to a compulsory conference at which it was directed (on 24 November 2010) that Mr Puryer file and serve his response to the application, and the statements of any witnesses upon whom he proposed to rely, by 24 February 2011. A further directions hearing was held on 1 April 2011.

[26] On 4 May 2011 the Tribunal conducted a hearing at which Mr Puryer adduced evidence, and made submissions. Following that hearing a timetable was set for an exchange of further written submissions, whereafter the Tribunal indicated an intention to re-convene and consider the matter on the papers.

[27] After some delay involving extensions to the timetable Mr Puryer filed his submissions on 24 June 2011 but, under cover of a letter with them, also sought leave to produce further sworn evidence from himself, and make himself available for cross examination. The Commissioner signified it did not wish to cross examine him. He was granted leave to read and file a further affidavit but his application for a further oral hearing was declined, again with reasons, on 26 August 2011.

[28] The Tribunal then reconvened to consider the parties' submissions on 13 September 2011.

[29] In his written submissions filed 24 June 2011 Mr Puryer raised, for the first time, an argument that the discipline application is defective because it is insufficiently particularised and embarrassing, and he is unaware of the case he has to answer. He had never previously asserted this at any directions hearing, or at the hearing on 4 May 2011.

[30] The claim that the application lacks particularity is, in light of what has happened in the course of the matter, mischievous. The application itself sets out particulars of each charge. While the history of the events that led to the disciplinary proceeding, set out above, is not without a degree of length and complexity the charges themselves, and the particulars that accompany the application, are clear.

[31] It is also clear from Mr Puryer's own material that he fully understands what is alleged against him. In his affidavit of 29 July 2011, filed after the hearing this year, he exhibits a letter he wrote to the applicant on 23 January 2009 in which he says (at para 7): *'… as I understand what is in broad terms the 'complaint' it has been suggested that on or about 13 December 2011 I misled Daubney J. It is my submission that I did not mislead Daubney J. Nevertheless if the view is formed that my actions, documents and submissions did in fact mislead the Court, then such actions, documents and submissions were not of such a nature or type to constitute conduct or unprofessional conduct*'.

[32] Mr Puryer's letter then goes on to traverse, in detail, what was said in the Court of Appeal decision of 22 August 2008, with specific reference to

numbered paragraphs in that decision in which the Court addressed the history of the matter before Daubney J. The letter is eight pages long. It contains detailed submissions from Mr Puryer about the proceedings in the Supreme Court, their background, and how they unfolded. It is inescapable that, almost three years ago now, he clearly understood what was alleged against him. The subsequent history of the proceedings, including the applications he brought during it, the compulsory conference, and the hearing itself make it mischievous for him to claim, now, that he is not fully apprised of the case he must answer.

Mr Puryer's submissions

[33] In that very early letter of 23 January 2009 Mr Puryer contended that there was no inconsistency between the orders made by Muir J on 22 December 2006 and Daubney J on 13 December 2007; that he handed the list of the material upon which he relied to Daubney J on that date; that he answered all questions put to him by that Judge truthfully and properly; and, that he had fully and truthfully informed the Court on that occasion of all necessary matters in his supporting affidavits.

[34] He raises one matter in that letter which was still alive at the time of the hearing on 4 May 2011: that a passage of the written transcript of the hearing before Daubney J, set out at para [14] of the Court of Appeal decision, contains a transcription error.

[35] The error occurs, Mr Puryer says, in his answer to the third question from the Judge, contained in that passage:

> HIS HONOUR: I know. I'm just a little uncomfortable that they may be labouring under a misapprehension that all that's happening today is that you are not seeking a costs order. Do you know what I mean?
>
> APPLICANT: Well that was the terms of the position between the parties the agreement that I wouldn't seek costs orders against those parties. That's the third respondent and also the fourth respondent. But she's been given notice – that notice, your Honour, was given as far back as February of this year in terms of **the** amended application, and further also … (*emphasis added*)

Mr Puryer has consistently asserted that he did not say *the* amended application but, rather, *an* amended application. At the hearing on 4 May 2011 he tendered a recording of the hearing, which was played to the Tribunal Members. The recording is faint and it is impossible to say, with certainty, which word was used. The balance of the transcript is of little assistance. On several occasions Mr Puryer is recorded as saying '*the*' when referring to the application.

[36] The matter is not, in any event, critical. It is clear from the transcript that Daubney J was concerned about the issue of service on the co-tenant of the amended application seeking an order for indemnity from her. He

raised the matter on at least four occasions, in very clear terms: *'But the concern that I've still got is that she may not understand that you are actually seeking an order that will bind her to pay money to you by way of an indemnity*'.

[37] In his responses to the judge Mr Puryer admitted that he had only served the co-tenant with the latest amended application the previous day, but said a number of things that cannot be construed as anything except an attempt to convey to Daubney J that the co-tenant had been aware, for almost a year, of the nature of the relief he was seeking.

[38] He said: *'… but I've given notice of the proceedings to the amended application and that amended application, I think, goes back to February your Honour*'; and, a short time later: *'… but she's been given notice – that notice, your Honour, was given as far back as February this year in terms of the amended application, and further also*'. Three lines later, Mr Puryer says to Daubney J: *'Your Honour, I've sent the amended application to the respondent several times now*'.

[39] In his submissions Mr Puryer also refers to the subsequent order made by Daubney J to the effect that the co-tenant was to have further time to address the matter and the making of that order – allowing her some protection – is, Mr Puryer says, something which makes it clear that 'in totality' he did not mislead the Court.

[40] In the alternative, as I understand his submissions, if the Judge was misled then that occurred through inadvertence, and the event should not be categorised as one that involved deliberate conduct on Mr Puryer's part. He refers to the fact that some complexity surrounded the proceedings on 13 December 2007, involving two amended applications. There is no direct evidence, Mr Puryer says, that he deliberately misled the Court.

Findings

[41] In an affidavit that he prepared, swore and filed on 12 December 2007 Mr Puryer deposed that his co-tenant had not paid any contribution to rent, outgoings or other obligations under the tenancy agreement since 28 July 2006.

[42] While it is true that one of his affidavits exhibited a letter from the letting agent to him, dated 31 July 2006, which referred to the co-tenant's payment, in advance, of 40% of the rent for the balance of the term until February 2011, the transcript makes it clear that he did not draw that correspondence to the attention of Daubney J.

[43] Those events occurred, as the Court of Appeal accepted[10], in circumstances where an amended application had been served the previous afternoon on the co-tenant; her attention had not been drawn to the significance of the new claim for relief against her; that claim was distinctly inconsistent with the spirit, if not the letter, of the earlier order of

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[10] *Puryer v Webb & Ors* [2008] QCA 246, [11].

22 December 2006; and where, with respect, the conclusion reached by the Court of Appeal at paragraph [15] of its Reasons is incontrovertible – namely that, at the hearing before Daubney J, Mr Puryer did not inform him of the co-tenant's payment or draw his attention to the terms of the letter of 31 July 2006.

[44] As the Court went on to observe, it is simply inconceivable that Daubney J would have made an order that the co-tenant indemnify Mr Puryer against one half of the rent, outgoings and service for the whole tenancy agreement if he had known of the co-tenant's payment.

[45] While this Tribunal is not, with respect, bound by the conclusions made by the Court of Appeal (or the views expressed by Dutney J) the decision of the Court contains findings which, in the respectful view of this Tribunal, properly reflect the weight of the evidence.

[46] The Court made two findings: that Daubney J had been misled by the position put before him as to the co-tenant's discharge of her obligations under the lease; and, that he had been misled as to the extent of the notice given to her about Mr Puryer's claim for an indemnity from her.[11]

[47] The first charge before this Tribunal involves the second of these matters: the allegation that Daubney J was misled into believing that the co-tenant had been given notice of the amended application as far before the hearing as February 2007. In the passage from the transcript before Daubney J set out at paragraph [14] of the decision of the Court of Appeal, Mr Puryer is recorded as telling his Honour that he had given notice of the proceedings *'… to the amended application and that amended application, I think, goes back to February, your Honour*'.

[48] While subsequent passages make it clear that Daubney J may have concluded that the co-tenant had received an amended application seeking indemnity from her at some earlier time, it cannot be said that any of Mr Puryer's statements or affidavits can be unequivocally construed as containing that submission. The Court of Appeal observed, at paragraph [16], Mr Puryer had 'assured' Daubney J that the co-tenant had been given notice of his amended application in February 2007 and that, in light of the context in which this assurance was given, *'… it is difficult to see how it would not have been taken to refer to the application for relief granted by order 4*'; but it cannot be said that any statement of Mr Puryer's was plainly to that effect.

[49] His remarks to the judge are capable of being construed as a submission that the application had been amended in February 2007; they do not go quite so far, with respect, as to suggest that the amended document had been served on the co-tenant at that time, or at any time before 12 December 2007. The Tribunal is not persuaded that Mr Puryer's own submissions were directed, or necessarily of a nature, to lead Daubney J into error. At worst they were less than complete but there are other aspects of the transcript which suggest they were not persuasive, and that the judge retained a concern that the co-tenant should have additional protection against any order.

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11 *Puryer v Webb & Ors* [2008] QCA 246, [29], [30].

[50] Support for that conclusion is to be found in his Honour's order directing personal service of the order itself on the co-tenant, and his stay of that order for a period allowing her to respond; orders which suggest that, in any event, his Honour was not convinced that the co-tenant had known of the application for a long time, or that service had been timely. The judge is recorded in that transcript as saying that he is *'… still just a little bit wary …'*, and it is that state of mind which led him to order the temporary stay.[12]

[51] His Honour also went on to say: *'… I still have a residual concern that she may not have understood that you are going to seek that order for indemnity against her'*. Mr Puryer did not argue against the making of that order. Had his conduct involved a deliberate intention to mislead the Court, it might have been expected that he would do so.

[52] For these reasons, if the Court was misled, this Tribunal is not persuaded that the misleading was necessarily caused by anything Mr Puryer said, or was deliberate.

[53] As to the second count, the Court of Appeal stopped short of making a finding that Mr Puryer *deliberately* misled Daubney J about the fact of the co-tenant's contribution to rent and outgoings – a finding which was unnecessary for its purposes.

[54] Mr Puryer always knew that, in truth, the co-tenant had paid 40% of the outgoings for the balance of the lease period. It is compelling, in the transcript of his answers to Daubney J's questions, that his failure to refer the Judge to the letter of 31 July 2006 was deliberate. That conclusion is strongly reinforced by his sworn evidence, in his affidavit filed 12 December 2007, that the co-tenant had *not* paid *any* contribution to rent, outgoings or other obligations.

[55] A finding that a party, lawyer or not, has deliberately misled a Court is a serious one. Nevertheless, these elements of the present case dictate that conclusion here. Just as it is inconceivable that Daubney J would have made his order had he known the facts, it is equally inconceivable that Mr Puryer could not have been aware of their relevance, and importance, in the relief he was seeking.

[56] The Tribunal is for these reasons satisfied that the second charge of misleading – the particulars of which are that Daubney J was misled about the co-tenant's actual contribution – are established, and aggravated by the additional circumstance that the misleading was deliberate.

[57] Dutney J, in ordering costs on an indemnity basis against Mr Puryer, said that Daubney J *'… appears to have been misled into making the order and that notice in any appropriate time frame was not given to (the co-tenant) of any intention to seek such an order …'*, and concluded that, for that reason alone, the order of Daubney J should be set aside. That is not, of course, an actual finding of misleading.

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[12] Transcript of Proceedings, *Puryer v Webb & Ors* (Supreme Court of Queensland, 7232 of 2006. Daubney J, 13 December 2007), 10.

[58] As Dutney J went on to observe, however, the application before Daubney J had been made *'… in essence, ex parte*' and in those circumstances Mr Puryer had *'… an obligation of utmost good faith to the Court*'. That circumstance is particularly relevant when, as the Court of Appeal went on to observe[13], Mr Puryer was a lawyer, carrying a lawyer's obligation of candour to the Court.

[59] The finding, in respect of the third charge, that he failed to meet his obligations of frankness and candour to the Supreme Court follow, logically and inevitably, from the adverse finding against him in respect of the second charge.

Penalty

[60] Mr Puryer is 56. He was admitted to practice as a solicitor in Victoria on 1 March 1979 and in Queensland on 27 April 1981. Throughout his legal career he has only ever worked as a sole practitioner in the firm Puryer & Co, ceasing actual work as a solicitor on 16 October 2002.

[61] He has previously been the subject of disciplinary proceedings on two occasions. In March 2001 he was found guilty on each of six charges of professional misconduct – two breaches of the *Trust Accounts Act and Regulations*, two failures to comply with Law Society Council notices, one charge of undue delay and unreasonable standards of competence and diligence, and one charge of writing letters to the Society containing representations that were carelessly made. He was ordered to pay $30,000, make his files available for audit at least four times in the subsequent two years, and attend a trust account management course.

[62] In September 2002 he was found guilty of a further four charges of professional misconduct – one involving a failure to render a bill of costs, one of failing to deliver documents to a client, and two of failing to comply with Law Society notices. He was also found guilty of unsatisfactory professional conduct for undue delay, and unreasonable standards of competence and diligence. He was suspended for twelve months and, after 16 October 2003, only applied for an employee-only practicing certificate for twelve months. He was also required to undertake and complete a practice management course before applying for that certificate.

[63] This Tribunal has previously observed that Courts must be able to rely on the honesty of its officers in making orders having serious legal consequences, and that any practitioner who actively deceives a Court into making an order puts their right to practise at risk: *Council of the Queensland Law Society Inc v Wakeling* [2004] QCAT 42.[14] In that case the solicitor had prepared and caused the filing of an affidavit by a client alleging that a nominated will was the last will of a deceased person when the solicitor knew that it was not, and that there was an issue about the deceased's testamentary capacity and a contest would ensue about the

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13 *Puryer v Webb & Ors* [2008] QCA 246, [31].

14 *Council of the Queensland Law Society Inc v Wakeling* [2004] QCA 42, [35] (Williams JA).

validity of the wills. The solicitor also faced a number of other serious charges but, as the present Chief Justice observed,[15] the conscious misleading of the Court *'… probably warranted his being struck off'*.

[64] In two further recent decisions the Court has imposed substantial fines, of up to $30,000, upon practitioners who deliberately or recklessly misled a Court.[16]

[65] Each of the two proven charges must be categorised as professional misconduct. That would occur in any event because Mr Puryer was, here, acting in a private capacity but the seriousness of the offending also warrants the finding.[17]

[66] The primary circumstances material to penalty are that, on one count, the practitioner deliberately misled the Court; that the offending involved matters involving his own interests; that his conduct in the proceedings shows he lacks a proper understanding of both the nature of his obligations of frankness and candour as a lawyer and, also, as a citizen; his previous offending against professional standards; and, that his conduct in these disciplinary proceedings themselves has involved a want of appreciation of those obligations – of which his very late, post-hearing, attack upon the original discipline application is an example.

[67] In concert, these factors dictate that he is not a fit and proper person to remain on the roll of practitioners, and his name should be removed.

[68] The Commissioner also seeks costs, assessed on the Supreme Court scale. Under the LPA an order of that kind must be made unless the disciplinary body is satisfied that exceptional circumstances exist. No circumstances of that kind are apparent here.[18] An order may be in a stated amount, or upon a basis of calculation. The QCAT Act provides that this Tribunal must fix costs if possible.[19] Plainly that course is available under both pieces of legislation, and is efficient.

Orders

[1] Charge 1 is dismissed;

[2] Charges 2 and 3 are upheld;

[3] The respondent's name is to be removed from the roll; and,

[4] It is further ordered that the respondent pay the applicant's costs of and incidental to the second and third charges; and that, for the purpose of determining those costs:

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15 *Council of the Queensland Law Society Inc v Wakeling* [2004] QCA 42, [27] (Jersey CJ).

16 *Legal Services Commissioner v Mullins* [2006] LPT 012; *Legal Services Commissioner v Voll* [2008] LPT 001.

17 *Legal Services Commissioner v Mullins* [2006] LPT 012; *Legal Services Commissioner v Voll* [2008] LPT 001; *Council of the Queensland Law Society v Wakeling* [2010] QCA 42; *Council of the Queensland Law Society v Wright* [2001] QCA 58.

18 *Legal Profession Act 2007*, s 462(1).

19 *Queensland Civil and Administrative Tribunal Act 2009*, s 107(1).

a. The applicant will, within 28 days, file and serve written submissions concerning the amount of its costs, and an affidavit showing their method of calculation; and,

b. The respondent will file and serve any submissions and affidavits in reply within 28 days thereafter.