

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Bui* [2021] QCAT 93

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

v

AN BUI
(respondent)

APPLICATION NO: OCR184-20

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 19 March 2021 (*ex tempore*)

HEARING DATE: 19 March 2021

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:
Mr Geoffrey Sinclair
Ms Julie Cork

ORDERS:

- 1. In respect of each of Charges 1, 2, 3, 4, 5, 6, 7, 8 and 9, there is a finding that the Respondent engaged in professional misconduct.**
- 2. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), the Tribunal recommends that the name of An Bui be removed from the Roll of Legal Practitioners in Queensland.**
- 3. The Respondent shall pay the Applicant's costs of and incidental to the discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where Respondent engaged in legal practice while not an Australian legal practitioner – where Respondent represented that he was entitled to engage in legal practice while not an Australian legal practitioner – where Respondent failed to provide information to the Applicant as required by s 543 of the *Legal Profession Act 2007* (Qld) – where Respondent failed to engage with the Tribunal – whether the Respondent has committed professional misconduct or unsatisfactory

professional conduct – whether the Respondent’s name should be removed from the local roll

Legal Profession Act 2007 (Qld), s 24, s 25, s 419, s 456, s 543

Legal Services Commissioner v Bui [2018] QCAT 424

Legal Services Commissioner v Walter [2011] QSC 132

APPEARANCES & REPRESENTATION:

Applicant: R G Reid instructed by the Legal Services Commissioner

Respondent: No appearance

REASONS FOR DECISION

- [1] On 29 June 2020, the Applicant, the Legal Services Commissioner, filed a discipline application under the *Legal Profession Act 2007 (Qld)* (“LPA”) bringing nine charges of professional misconduct against the Respondent, Mr An Bui. Leave has been given today to allow minor formatting changes to that discipline application. There have been no amendments of substance. Affidavits of service have been filed which prove that the Respondent has been served with all the material relating to today’s application. The Respondent has not appeared at today’s hearing, nor has the Respondent engaged in any way with the present discipline application.
- [2] As noted, there are a total of nine charges brought under the discipline application, and I will refer to the details of those charges shortly. The Applicant has filed a number of affidavits which constitute primary and direct evidence of all of the factual allegations contained and particularised in the discipline application. The Tribunal has had regard to that evidence and is satisfied that the evidence adduced by the Applicant on the present application proves to the requisite standard each of the factual allegations made in the discipline application.
- [3] The charges brought under the present discipline application fall into several categories. The first is that the Respondent, on a number of occasions, engaged in legal practice while not a legal practitioner. The second is that, on a number of occasions, he represented that he was entitled to engage in legal practice when he was not in fact entitled to do so. The third are instances of him failing to comply with requirements made by the Applicant as the relevant regulatory body to provide information in accordance with requirements under s 543 of the LPA.
- [4] Turning to the relevant background of this matter, it is sufficient to note that the Respondent was admitted as a solicitor in Queensland on 31 July 2000. He held various levels of practising certificates issued by the Queensland Law Society from July 2003. From May 2010 until December 2017, the Respondent engaged in practice as a sole practitioner under the name or style “Benson Lawyers”, based at Inala. On 18 December 2017, he was issued with a restricted practising certificate.
- [5] On 3 December 2018, the Respondent was dealt with by this Tribunal for other disciplinary charges – the decision of this Tribunal is *Legal Services Commissioner v*

Bui.¹ The charges which were brought against him at that time concerned his breach of an undertaking given to the Queensland Law Society relating to the payment of overdue taxes from his trust account, and also his failure to respond to correspondence sent by the Legal Services Commissioner requiring explanation of his conduct. At the conclusion of that hearing, as appears from the decision I have cited, the Respondent was found guilty of professional misconduct and it was ordered that his practising certificate be cancelled.

- [6] As a consequence of that decision, the Respondent has not held a practising certificate since 3 December 2018. Charges 1, 2, 3, 4, 5 and 6 in the present discipline application arise out of three discrete instances occurring since the cancellation of the Respondent’s practising certificate when, for the reasons that I will shortly mention, it is apparent that the Respondent both engaged in legal practice and held himself out to be entitled to engage in legal practice.
- [7] I note in passing that s 24(1) of the LPA prohibits a person from engaging in legal practice in Queensland unless the person is an Australian legal practitioner. By virtue of the definition of the term “Australian legal practitioner”, a person who does not hold a current practising certificate does not fall within the ambit of that definition. Accordingly, without a current practising certificate a person is precluded from engaging in legal practice.
- [8] Similarly, s 25 of the LPA provides that a person “must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.” Similar considerations apply in the application of that prohibition. The term “engage in legal practice” was the subject of consideration by me in *Legal Services Commissioner v Walter*.² I venture to adopt the observations that I made in that case about the proper construction and interpretation of the term “engage in legal practice”. In particular, I would repeat my preference, as expressed in those reasons for judgment, for the proposition that the term “engage in legal practice” invokes the notion of carrying on or exercising the profession of law and not merely the “business” of law.³
- [9] Turning to the facts of the present case, Charges 1 and 2 arose out of circumstances that occurred in April and June 2019. The evidence demonstrates that, on or about 8 April 2019, the Respondent prepared an “Affidavit for E-filing Application (Divorce)” in relation to divorce proceedings in the Federal Circuit Court and witnessed the signatures of the husband and the wife as a “lawyer”. Indeed, the Respondent purported to witness the wife’s signature despite not actually being present when she signed that affidavit.
- [10] On or about 16 April 2019, the Respondent prepared and witnessed an “Affidavit Translation of Marriage Certificate” in relation to the same proceedings, in which he referred to himself as both a “solicitor” and “lawyer” for the applicants. Then, on or about 4 June 2019 in relation to the same divorce proceedings, the Respondent prepared a “Notice of Discontinuance” which he signed, and nominated that he was both “lawyer for the applicant” and “lawyer for the respondent.”

¹ [2018] QCAT 424.

² [2011] QSC 132.

³ [2011] QSC 132, [18].

- [11] It is clear beyond argument that by engaging in these activities the Respondent engaged in legal practice by pursuing matters and actions which are inherently part of the practice of the profession of law. Charge 1 is clearly made out.
- [12] In relation to Charge 2 it is also clear that, by describing himself as he did in the various court documents to which I have referred, the Respondent represented that he was entitled to engage in legal practice and thereby contravened s 25 of the LPA. Accordingly, the Tribunal finds that each of Charges 1 and 2 is made out.
- [13] The next tranche of activity concerned a conveyancing transaction in which the Respondent clearly engaged in legal practice while not a legal practitioner between 19 May 2019 and 27 June 2019. The complainant in respect of the Respondent's conduct under these charges is a solicitor, Ms Severin, who acted for the seller of a particular property at Forest Lake.
- [14] Amongst the material filed and relied on by the Applicant on the present application is an affidavit by Ms Severin which directly deposes to the factual matters which are the subject of these complaints. As I have said, Ms Severin was acting for the seller of a particular property. On 20 May 2019, the Respondent sent an email to Ms Severin in her capacity as the solicitor for the vendor. That email advised, amongst other things, that the Respondent acted on behalf of the purchaser. The email was sent from what was obviously the Respondent's personal email address, namely "andrew_bui@bensonlawyers.com.au". It went on to identify the contract date and gave details about the deposit, conditions and the settlement date.
- [15] Then, on 3 June 2019, the Respondent sent an email to one of Ms Severin's conveyancing clerks. Again, the email sent by the Respondent was intimately concerned with the progress of the conveyance and advised, amongst other things, satisfaction by the Respondent's "client" with certain conditions of the contract and confirmation that the contract had become unconditional. On 3 June 2019, the Respondent sent a letter by email to the conveyancing clerk in which he said "we ... undertake" to use the transfer document for stamping purposes only. The footer of the letter referred to "Andrew Bui-solicitor", above a web address for Benson Lawyers.
- [16] On 14 June 2019, a special water reading was provided by Urban Utilities and was sent to the Respondent's email address, addressed to "Benson Lawyers".
- [17] Again, it is clear beyond peradventure that the conduct engaged in by the Respondent in connection with this conveyance was conduct by which he purported to act as the lawyer for the purchaser in the conveyancing matter. In that regard, he engaged in correspondence with the vendor's solicitors and purported to provide an undertaking as a solicitor in the conveyancing matter. He clearly engaged in legal practice by doing so and contravened s 24 of the LPA. And similarly, by describing himself as he did in the various pieces of correspondence that I have just outlined, it is clear that he represented that he was entitled to be engaged in legal practice in contravention of s 25 of the LPA. The Tribunal finds that Charges 3 and 4 on the discipline application have been made out.
- [18] Charges 5 and 6 arise out of another conveyancing transaction. Mr Matthew Bradshaw, a solicitor, was engaged to act on behalf of the seller in a conveyancing matter. I also note for completeness that an affidavit by Mr Bradshaw has been filed in the present proceeding, which provides direct evidence of the factual matters upon which the Applicant relies in this discipline application. On 9 September 2019, the Respondent sent an email to Mr Bradshaw in which the Respondent purported to

advise that, “we act on behalf of the purchaser ... and instructed [sic] to seek extension of finance to 11 September 2019 and settlement to 23 September 2019.” The signature block at the end of the email included contact details for “Benson Lawyers”.

- [19] On 13 September 2019, a conveyancing clerk at the vendor’s solicitors sent an email to the Respondent urgently requesting a copy of the contract. The Respondent replied that the agent would forward the contract soon. Then, on 16 September 2019, the Respondent sent an email to the conveyancing clerk for the vendor, which enquired as to whether the contract had been received and said:

I am instructed that our client is satisfied with the finance and building and pest conditions and confirmed the contract is unconditional and settlement shall be effected on Monday 23/9/2019 (errors in original).

On that same day, the conveyancing clerk responded advising that the vendor’s solicitors had only recently received the contract and settlement was unlikely to be able to occur on 23 September 2019. The Respondent replied to that, “thanks.”

- [20] On 17 September 2019, Mr Bradshaw sent further correspondence to the Respondent concerning the conveyance. In that letter Mr Bradshaw noted that it was usual for the purchaser’s solicitor to provide the “usual undertakings” in relation to that transaction. There was then further correspondence backwards and forwards, particularly by the Respondent enquiring as to what undertakings the vendor’s solicitors were seeking. The vendor’s conveyancing clerk responded, not surprisingly, that what they were looking for were the “usual undertakings” given by purchasers’ solicitors in conveyancing matters. It was also emphasised that the vendor’s solicitors required the name of the solicitor who would be providing the undertakings.
- [21] The Respondent then replied, “An Bui is the name of the solicitor to provide the undertaken [sic].” Later that day, Mr Bradshaw wrote to the Respondent indicating that checks of the relevant registry had failed to locate the Respondent’s name on the roll of solicitors. There was then follow up correspondence which culminated in a person at another firm writing to the vendor’s solicitors to advise that the other firm had now been instructed in the conveyancing matter.
- [22] Again, it is clear beyond argument that the Respondent was acting for the purchaser in this conveyancing matter. He was communicating with another firm on behalf of the purchaser and he purported to be willing to give undertakings as a solicitor on behalf of the purchaser. He undoubtedly engaged in legal practice in contravention of s 24 of the LPA. Moreover, by the way in which he described himself he also, in breach of s 25 of the LPA, represented that he was entitled to engage in legal practice at a time when he was not. Accordingly, each of Charges 5 and 6 have been made out.
- [23] I can address Charges 7, 8 and 9 briefly. Each of those charges relate to each of the incidents that I have already described. In respect of each of those incidents the Applicant wrote to the Respondent asking for a full explanation of his alleged conduct. No response was received to any of that correspondence. In relation to each of the matters, the Applicant then served a notice on the Respondent, pursuant to s 543(1)(c) of the LPA, which required him to provide a full explanation of the alleged conduct. Each of those notices nominated a deadline for the provision of that explanation by the Respondent. The Respondent has not provided any response whatsoever to any of those three formal requests made under s 543(1)(c) of the LPA. Each of Charges 7, 8 and 9 is made out on the material before this Tribunal.

- [24] Having found that the factual substratum of each of the charges has been proven to the requisite standard, it is necessary for the Tribunal to characterise the conduct engaged in by the Respondent under each charge. Insofar as Charges 1, 2, 3, 4, 5 and 6 are concerned, on each charge it is clear that the Respondent wilfully and disgracefully purported to act as a solicitor and represented himself as being a solicitor at a time when his practising certificate had been cancelled as a consequence of the orders previously made by this Tribunal.
- [25] Having regard to the relevant definition of professional misconduct in s 419 of the LPA, this is not just a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence. The Respondent's wilful flouting of the lawful requirements relating to engaging in legal practice amount to a significant and abysmal failure to observe anything like the standards of competence and diligence required of legal practitioners in this State. And, in any event, his conduct is such as would clearly justify a finding that he is not a fit and proper person to engage in legal practice. On any view of it, in respect of each of Charges 1, 2, 3, 4, 5 and 6, a finding that the Respondent engaged in professional misconduct is warranted and will be made.
- [26] In respect of Charges 7, 8 and 9, it is notable that precisely the same conduct was the subject of the charges last dealt with by this Tribunal in December 2018. At that time, it was noted that it is a serious matter for a practitioner to ignore notices such as those which were given in the present case.⁴ As the Tribunal said at that time, a failure to respond to such notices:

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 the regulator in ensuring probity within the ranks of the profession.⁵

The Tribunal characterised the Respondent's failures in that case as professional misconduct. If anything, his present conduct is more egregious, given that it comes close on the heels of the decision of the Tribunal in 2018. It is clear that there must be findings of professional misconduct in relation to each of Charges 7, 8 and 9.

- [27] Turning then to sanction, it is sufficient on the facts that have been outlined at length above for the Tribunal to say this. The Respondent has acted dishonourably. He is not a fit and proper person to be a member of the legal profession. His name should be struck from the roll of practitioners.
- [28] Accordingly, the orders of the Tribunal are as follows:
1. In respect of each of Charges 1, 2, 3, 4, 5, 6, 7, 8 and 9, there is a finding that the Respondent engaged in professional misconduct.
 2. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), the Tribunal recommends that the name of An Bui be removed from the Roll of Legal Practitioners in Queensland.

⁴ *Legal Services Commissioner v Bui* [2018] QCAT 424, [14].

⁵ *Ibid.*

3. The Respondent shall pay the Applicant's costs of and incidental to the discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.