

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Walker* [2021] QCAT 389

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

v

ANGELA WALKER
(respondent)

APPLICATION NO/S: OCR033-21

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 November 2021 (*ex tempore*)

HEARING DATE: 5 November 2021

HEARD AT: Brisbane

DECISION OF: Hon Peter Lyons QC, Judicial Member
Assisted by:
Mr David Logan QC
Dr Susan Dann

- ORDERS:
- 1. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007 (Qld)*, an order is made recommending that the name of the respondent be removed from the local roll.**
 - 2. The respondent shall pay the applicant's costs on the standard basis of and incidental to this discipline application, such costs to be assessed as if this were a matter heard in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent was an Australian lawyer – where the respondent was admitted as a barrister – where the respondent failed to comply with orders made under the *Body Corporate and Community Management Act 1997 (Qld)* – where the respondent failed to comply with an order of this Tribunal – where the applicant has brought a discipline application against the respondent – where the respondent has admitted the conduct – where the parties agree about the orders to be made – whether the name of the respondent ought be removed from the local roll

Body Corporate and Community Management Act 1997 (Qld), s 288

Legal Profession Act 2007 (Qld), s 417, s 452, s 456

Legal Services Commissioner v Feeney [2020] QCAT 122

Legal Services Commissioner v Manz [2019] QCAT 147

Legal Services Commissioner v McLeod [2020] QCAT 371

APPEARANCES & REPRESENTATION:

Applicant: A J Hartnett, instructed by Legal Services Commissioner

Respondent: P Morreau, with H Berghofer, instructed by OMB Solicitors

REASONS FOR DECISION

- [1] In the discipline application which founds this hearing, the applicant has formulated one charge. This charge relates to non-compliance with orders made under the provisions of the *Body Corporate and Community Management Act 1997 (Qld)* (“BCCM Act”), and an order of this Tribunal.
- [2] The respondent is an Australian lawyer, having been admitted as a barrister on 2 February 2009. She held a practising certificate from 7 August 2009 until 11 May 2018. As a result of that, she was in that period an Australian legal practitioner.
- [3] The present application is made under s 452 of the *Legal Profession Act 2007 (Qld)* (“LPA”). That provision authorises the bringing of a discipline application against a legal practitioner. Section 456 authorises the making of orders when findings are made against an Australian legal practitioner. However, s 417 has the effect that chapter 4, which includes ss 452 and 456, apply to former Australian legal practitioners in relation to conduct happening while they were Australian legal practitioners, in the same way as it applies to persons who are Australian legal practitioners, and that these provisions apply with any necessary changes. These matters were discussed briefly by the Tribunal in *Legal Services Commissioner v Feeney*.¹ Accordingly, there is no reason to doubt the Tribunal’s jurisdiction to deal with this matter, notwithstanding the fact that the respondent no longer holds a practising certificate.
- [4] Mention has been made of the fact that orders were made against the respondent under the BCCM Act. The first order was made on 24 January 2017. It was made by an Adjudicator acting under the provisions of that Act and required the respondent and others to provide to a person appointed as the administrator of a community title scheme, the body corporate fund’s books and records. The respondent did not comply with that order.
- [5] A further order was made on 20 April 2017 appointing another administrator of the community titles scheme and the orders requiring the provision of the body corporate fund’s books and records to the newly appointed administrator were repeated. Again, the respondent did not comply. It is worth noting that that resulted in the administrator

¹ [2020] QCAT 122, [17].

bringing proceedings against the respondent, charging her with an offence against s 288(1) of the BCCM Act. After a contested one-day hearing, the respondent was convicted of the offence of not complying with the orders, and later was fined the sum of \$7,000 and ordered to pay \$11,000 in court costs. The conviction was made at the end of the hearing – the court giving *ex tempore* reasons – although the sentence imposed was not imposed for some months.

- [6] On 27 March 2018, a Member of this Tribunal made further orders directing the respondent to provide the books and records of the community titles scheme in her possession to the administrator by 3 April 2018 and again, the respondent did not comply.
- [7] There is, thus, the extended and protracted period of non-compliance with orders of a body acting under legislative authority, including an order of this Tribunal. There has been no suggestion that the respondent had a reasonable excuse for not complying with these orders. In those circumstances, the respondent's non-compliance is inevitably a serious matter.
- [8] The applicant contends that this conduct demonstrates that the respondent has engaged in professional misconduct and that she is currently not a fit and proper person to hold a practising certificate and be a member of the legal profession. The respondent has ultimately admitted the conduct on which the applicant relies. She is represented here by lawyers, including counsel. In her submissions, it is accepted that she engaged in protracted disobedience to quasi-judicial orders of the adjudicators and this Tribunal. It is also accepted that her conduct establishes current unfitness and the probability of continuing unfitness to be a lawyer under the provisions of the LPA. Those concessions are concessions as to matters of fact. There is no reason for the Tribunal not to accept them.
- [9] On other occasions, this Tribunal has expressed some caution about the adoption of an agreed position taken by the parties in proceedings of this kind.² In the present case, as I have indicated, there is no reason not to accept the factual position as agreed between the parties. Once that has occurred, it is appropriate to make a finding that the conduct the subject of the charge amounts to professional misconduct and to make the orders about which the parties agree. Those orders are an order pursuant to s 456(2)(a) of the LPA recommending that the respondent be removed from the local roll, and an order that the respondent pay the applicant's cost on the standard basis of and incidental to this discipline application, such costs to be assessed as if this were a matter heard in the Supreme Court of Queensland. The Tribunal orders accordingly.

² See *Legal Services Commissioner v Manz* [2019] QCAT 147, [41]-[54]; *Legal Services Commissioner v McLeod* [2020] QCAT 371, [31]-[32].