

CITATION: *Legal Services Commissioner v Watts* [2016] QCAT 4

PARTIES: Legal Services Commissioner
(Applicant/Appellant)
v
Peter John Watts
(Respondent)

APPLICATION NUMBER: OCR077-12

MATTER TYPE: Occupational Regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Peter Sheehy, Legal panel member
Julie Cork, Lay panel member

DELIVERED ON: 8 January 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The name of the respondent, Peter John Watts, be removed from the roll of practitioners kept by the Supreme Court of Queensland.**
- 2. The respondent pay the applicant's costs, fixed in the sum of \$2,000.00, within 30 days of the date of this order.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST FUNDS – where the respondent was charged with misappropriating trust funds – where the respondent admits the charges and admits the conduct amounts to professional misconduct – appropriate penalty - whether the respondent is a fit and proper person – whether the respondent's name should be removed from the roll of legal practitioners

Legal Profession Act 2007 (Qld) ss 418, 419, 462(1)
Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498
Attorney-General v Bax [1999] 2 Qd R 9
Legal Services Commissioner v Madden [2008] QCA 301
Legal Services Commissioner v Quinn [2012] QCAT 618

APPEARANCES and REPRESENTATION (if any):

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

REASONS FOR DECISION

- [1] The Legal Services Commissioner asserts that conduct outlined in the following charges constitutes professional misconduct.

Charge 1 – disbursing trust money without authority

- [2] On 23 March 2006, Mr Watts breached s 249(1)(b) of the *Legal Profession Act 2007 (Qld)* ('the Act') in that he improperly paid monies to himself from trust in the sum of \$2,000.00 without authority.

Charge 2 – disbursing trust money without authority

- [3] On 20 May 2009 and 22 May 2009 Mr Watts breached s 249(1)(b) of the Act in that he caused sums totalling \$29,400.00 to be paid from the trust account when he did not have authority to pay the monies from the trust account to himself and was not owed any money with respect to accounts issued by him.

Charge 3 – disbursing monies without authority

- [4] On 21 October 2009 and 19 November 2009 Mr Watts breached s 249(1)(b) of the Act in that he transferred sums totalling \$35,000.00 from trust in circumstances where he did not have authority to transfer the monies.

Charge 4 – disbursing trust money without authority

- [5] On 10 December 2009 Mr Watts breached s 249(1)(b) of the Act in that Mr Watts transferred the sum of \$30,000.00 from trust when he was not authorised to do so.

Charge 5 – disbursing trust money without authority

- [6] On 27 January 2010 Mr Watts breached s 249(1)(b) of the Act in that he transferred the sum of \$20,000.00 from his trust account in circumstances where he was not authorised to do so.

Charge 6 – disbursing trust money without authority

- [7] On 24 March 2010, 1 April 2010 and 17 May 2010 Mr Watts breached s 249(1)(b) of the Act in that he transferred sums totalling \$70,000.00 from his trust account when he was not authorised to do so.

Background facts

- [8] The parties have filed a statement of agreed facts in which Mr Watts admits the allegations and charges made against him.

Discussion

- [9] Section 418 of the Act provides:

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

- [10] Section 419 of the Act relevantly provides:

(1) **Professional misconduct** includes—

- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence;

- [11] Thomas J has formulated the test for professional misconduct as '*the test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency*'.¹

Conduct

- [12] Mr Watts has admitted the charges² and the parties have filed a statement of agreed facts.

- [13] In those circumstances, the Legal Services Commissioner identifies the issues for determination as whether the respondent's conduct amounts to professional misconduct or unsatisfactory professional conduct and, if so, identification of the appropriate orders which should be made by the Tribunal.

¹ *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 507.

² Response dated 16 May 2012.

- [14] The Legal Services Commissioner submits that the conduct amounts to professional misconduct and that, in the circumstances, the appropriate order is that Mr Watts' name be removed from the roll of legal practitioners.
- [15] Charges 1, 2, 3 & 6 relate to circumstances where payment was made from trust to Mr Watts before he had issued an account. As to charge 2, Mr Watts ultimately was entitled to the monies disbursed after he issued a bill to his client. In other instances, the payment was refunded to the client. As to charge 3, the refund was made around 12 months after the first unauthorised disbursement was made.
- [16] As to charges 4 and 5, Mr Watts created false trust account receipts to record receipt of funds into trust from a client and then transferred amounts "received" into his general account, which resulted in a deficiency in the trust account. These monies were restored to trust after 6 months (with respect to charge 4) and after a few weeks with respect to charge 5.
- [17] Mr Watts' conduct was unacceptable and fell short, to a very substantial degree, of the standard of professional conduct which would be expected of members of the profession of good repute and competency.
- [18] In the circumstances, Mr Watts' conduct amounts to professional misconduct, as that term is used in s 419 of the Act.
- [19] Mr Watts accepts that his conduct should properly be characterised as professional misconduct.³
- [20] It is open to the Tribunal to make any order it thinks fit.⁴ The Legal Services Commissioner submits that Mr Watts is not a fit and proper person to practice law.
- [21] In making this submission, the Legal Services Commissioner refers to the case of *Legal Services Commissioner v Quinn*, when it was said that reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities attaching to a solicitor.⁵
- [22] The Legal Services Commissioner submits that, as it is not possible to be satisfied that Mr Watts is fit to practice, the appropriate order should be that Mr Watts name be removed from the roll of practitioners.
- [23] On the other hand, Mr Watts accepts that he should be publicly reprimanded but submits that his name should not be removed from the roll of practitioners.⁶ When considering the order which should be made,

³ Respondent's submissions dated 28 October 2013, paragraph 1.

⁴ Orders can include those described in s 456 of the *Legal Profession Act 2007* (Qld).

⁵ *Legal Services Commissioner v Quinn* [2012] QCAT 618 at [12].

⁶ Respondent's submissions dated 28 October 2013, paragraph 4.

and the penalty which should be imposed, the Tribunal must be concerned primarily with the need to protect the public.⁷

- [24] In this context, disciplinary penalties are not imposed to punish the practitioner.
- [25] In terms of whether a person is a fit and proper person, the relevant time at which to consider that question is not at the time of the conduct, but at the time of the hearing.
- [26] Regarding the question of whether Mr Watts is now a fit and proper person, the Tribunal must consider what is necessary for the protection of the public and the maintenance of professional standards, bearing in mind the current circumstances.
- [27] In that respect, Mr Watts submits that the underlying causes of the conduct were that, at the time, he was under significant financial pressure resulting in personal and psychological stresses that led to poor judgment and decision making.⁸
- [28] Mr Watts submits that uncontradicted expert medical evidence⁹ suggests it is unlikely he will engage in similar conduct in the future.¹⁰
- [29] In relation to the conduct, Professor Harvey Whiteford, consultant psychiatrist, observes:

On a number of occasions between 2006 and 2010 he moved money from his legal practice's trust account "without authority", "to keep the business afloat". He told me that he had repaid the money prior to any third party becoming aware that it had been taken. Mr Watts described these actions as "a calculated risk", necessary given clients had not paid him monies owed at the time.¹¹

- [30] When describing the disorder suffered by Mr Watts, Professor Whiteford observes that Mr Watts had episodes of anxiety sufficient to constitute an adjustment disorder but opines '*whilst they have acted to impair his judgment, I do not believe they removed his capacity to understand what he was doing or control his actions*'.¹²
- [31] Professor Whiteford refers (as at the date of his report of 30 January 2013) to Mr Watts' continuing to experience fluctuating psychological stress related to issues in the management of the company of which he was a part owner and also the disciplinary proceedings brought by the Legal Services Commissioner. He observes '*with removal of the*

⁷ *Legal Services Commissioner v Madden* [2008] QCA 301; *Attorney-General v Bax* [1999] 2 Qd R 9 at 21.

⁸ Respondent's submissions dated 28 October 2013, paragraph 9.

⁹ Being the reports by Dr Lars Madsen & Professor Harvey Whiteford.

¹⁰ Respondent's submissions dated 28 October 2013, paragraph 15.

¹¹ Report by Professor Harvey Whiteford dated 30 January 2013, page 2.

¹² Report by Professor Harvey Whiteford dated 30 January 2013, page 6-7.

stressors, in either in whole or in part, his vulnerability to develop further clinically significant anxiety symptoms would be much less'.¹³

- [32] At the time, Mr Watts told Professor Whiteford of actions he had initiated which should result in significant reduction of his work-related stresses. Mr Watts said he expected these actions to remove the stresses of the previous 6-9 months.¹⁴
- [33] Professor Whiteford expressed the opinion that there was a low risk of misconduct similar to that for which Mr Watts had been charged, and attributed this to the identification of the misconduct as a significant deterrent, and also to the fact that Mr Watts had developed strategies to better control his anxiety.
- [34] Dr Lars Madsen, a forensic and clinical psychologist, provided a report dated 12 December 2012.
- [35] Dr Madsen refers to the circumstances which contributed to Mr Watts becoming increasingly disillusioned with his life, prompting him to question and then doubt his own value system, leading to inner turmoil which triggered a further deterioration of his mental state and wellbeing and ultimately feelings of intense distress. Within these psychological circumstances, Mr Watts decided to use the trust funds to cover his costs and meet his obligations.¹⁵
- [36] Dr Madsen concludes that Mr Watts' behaviour '*appears to have been the result of a confluence of interpersonal, intra-personal and contextual factors at a specific period of time*'.¹⁶
- [37] In the December 2012 report, Dr Madsen concluded that many factors pointed to a conclusion that future contraventions were unlikely. These included age, history of stable employment, not having been diagnosed with psychopathy or anti-social personality disorder, having no substance abuse or alcohol dependency problems, possessing pro-social support and having strong ties with pro-social activities.¹⁷
- [38] In concluding, Dr Madsen notes it is important to recognise that Mr Watts' behaviour was a function of his inability to cope with his personal circumstances, and subsequent poor problem solving and decision making. He notes that if these psychological and contextual matters were improved or resolved (i.e. improved psychological state, less financial pressures), his opinion is that Mr Watts' risk of engaging in similar behaviour in the future is likely to be very low.¹⁸

¹³ Report by Professor Harvey Whiteford dated 30 January 2013, page 7 para C.

¹⁴ Ibid.

¹⁵ Report by Dr Lars Madsen dated 12 December 2012, paragraph 24 and 28.

¹⁶ Ibid, paragraph 27

¹⁷ Ibid, paragraph 31.

¹⁸ Ibid.

- [39] Both Dr Madsen and Professor Whiteford recommended regular medical treatment, preferably with a clinical psychologist.
- [40] Dr Madsen provided a further report dated 4 May 2015.
- [41] Dr Madsen refers to his early assessment in concluding that Mr Watts' professional misconduct was a function of poor "decision making" in a context wherein he had suffered a deterioration of his mental health in highly stressful circumstances.¹⁹
- [42] Dr Madsen refers to three psychological consultations in 2013, three in 2014 and three in 2015 with the focus of these sessions being to assist Mr Watts in "managing the stress that he was experiencing".²⁰
- [43] Dr Madsen makes the following observations:
- It has been my judgment that Mr Watts has probably engaged as well as could be expected given his circumstances. He continues to run a property management business in Paddington. This has been difficult for him, due partly to the nature of the work, however, also to the problematic behaviour of his business partner... It is my assessment, therefore, that Mr Watts is exposed to exceptional interpersonal stresses, in addition to the stress associated with the current proceedings, in his 'day to day' activities.²¹
 - Mr Watts' "recent history shows persisting with running his business, managing his affairs and dealing with the uncertainty and stress of the current matters before the Tribunal". Mr Watts has developed a number of strategies which are helpful to him and assist him with coping.²²
 - ...when one considers Mr Watts' circumstances in completeness, one can only conclude that his situation is fairly exceptional. He ... has remained working in a business that is both a financial burden upon him and psychologically harmful to him... All these issues remain a concern for him, and cannot either individually or collectively be easily resolved. Bearing all of these factors in mind, therefore, it would be unrealistic to expect that Mr Watts would not at this time be experiencing some stress and emotional upset.²³
 - Dr Madsen's evaluation is that Mr Watts has "probably engaged in the process as well as could be expected, and gained from it what has been helpful to him for coping with his circumstances at that time. His demonstrated ability to 'stick the course' with regards to the responsibilities (i.e. work, financial, and so forth), shows him to have developed resiliency and a capacity to cope under pressure... there is evidence that he has functioned effectively and been able to make good

¹⁹ Report by Dr Lars Madsen dated 4 May 2015, paragraph 11.

²⁰ Ibid, paragraph 13.

²¹ Ibid, paragraph 14.

²² Ibid, paragraph 15.

²³ Ibid, paragraph 17.

decisions. Or put another way, he has demonstrated a capacity to psychologically cope with his situation”.²⁴

- [44] It is not suggested that Mr Watts’ state of mind or psychiatric position between 2006 and 2010 is an excuse for his conduct. Indeed, it is admitted that his conduct amounted to professional misconduct.
- [45] What is suggested by Mr Watts is that his circumstances and psychiatric condition have changed to such an extent that he would no longer be involved in similar conduct – hence the submission that it is not necessary that his name be removed from the roll of practitioners in order to protect the public.
- [46] The major stressors originally identified in the earlier reports as having contributed to Mr Watts’ state of mind and which caused him to undertake the conduct related to financial and emotional stresses. For example, Professor Whiteford said that removal of these stressors would lessen his vulnerability to developing further clinically significant anxiety symptoms and also mentions actions which were being taken by Mr Watts which, according to Mr Watts, would result in a significant reduction in his then existing work related stress.
- [47] It is evident from the most recent report of Dr Madsen that these stresses have not been removed. Dr Madsen refers to Mr Watts continuing to work in a business *‘that is both a financial burden upon him and psychologically harmful to him’*.
- [48] In those circumstances, it is impossible to conclude with adequate certainty that the stresses described in the medical reports which lead to the psychiatric condition which caused the conduct have changed significantly so as to eliminate any risk to the public.
- [49] In those circumstances, the Tribunal concludes that Mr Watts is not a fit and proper person to remain in legal practice and so orders that his name be removed from the roll of practitioners.

Costs

- [50] The Legal Services Commissioner has sought an order that costs, fixed in the amount of \$2,000.00, be paid within 30 days of the date of the order by the Tribunal.
- [51] Pursuant to s 462(1) of the Act, the applicant is entitled to costs unless the Tribunal is satisfied that exceptional circumstances exist which would mean that such an order should not be made.
- [52] No exceptional circumstances can be identified in this case.

²⁴ Ibid, paragraph 18.

- [53] Mr Watts has indicated he accepts that he be ordered to pay the Legal Services Commissioner's costs and does not resist an order that the cost be fixed in the sum of \$2,000.00.
- [54] It is ordered that the respondent pay the applicant's costs, fixed in the sum of \$2,000.00, within 30 days of the date of this order.