

**CITATION:** Legal Services Commissioner v Urban [2013] QCAT 521

**PARTIES:** Legal Services Commissioner  
(Applicant)  
v  
Chandrika Achala Devi Urban  
(Respondent)

**APPLICATION NUMBER:** OCR368-12

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers; the Panel met to consider the matter on 1 October 2013

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Alan Wilson, President**

Assisted by:  
**Mr Geoffrey Sinclair**  
Practitioner Panel Member; and  
**Dr Susan Jean Dann**  
Lay Panel Member

**DELIVERED ON:** 1 October 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. The respondent's name is to be removed from the local roll.**
- 2. The respondent is to pay the applicant's costs, fixed in the amount of \$2,500 within 90 days of this order.**
- 3. The respondent is to pay John Tiplady compensation in the sum of \$6,185 within 30 days of this order.**

**CATCHWORDS:** PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent charged excessive legal costs, breached an undertaking, illegally transferred funds from trust account, failed to properly administer trust account,

misappropriated trust funds, borrowed money from client, failed in professional obligations to client and failed to comply with notices issued by the applicant and Queensland Law Society – where the respondent did not file a response to the discipline application and has not attended any Tribunal directions hearings – where the applicant contends the respondent’s conduct amounts to professional misconduct – whether the conduct amounts to professional misconduct or unsatisfactory professional conduct – whether the respondent is a fit and proper person to engage in legal practice – whether conduct warrants the Tribunal ordering that the respondent be struck off the local roll

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – MISCONDUCT – COMPENSATION ORDERS – where the respondent received money from a client on account of medical assessment and report fees – where the respondent did not transfer that money into the trust account – where no medical examination was undertaken – where the client suffered a pecuniary loss and seeks a compensation order – whether a compensation order would be in the interests of justice

*Legal Profession Act 2007 (Qld)*, s 248, s 418, s 419, s 443(3), s 462, s 464, s 466(3)  
*Legal Profession Regulation 2007 (Qld)*, s 58  
*Australian Solicitor Conduct Rules 2012*, r 6.1  
*Queensland Law Society Rules 1987*, r 86(1), r 124

*Council of the Queensland Law Society Inc v Whitman* [2003] QCA 438, cited  
*Law Society of New South Wales v Harvey* [1976] 2 NSWLR 154, cited  
*Legal Services Commissioner v Podmore* [2006] LPT 005, cited  
*Legal Services Commissioner v Twohill* [2005] LPT 001, cited  
*New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, cited  
*Official Assignee of Collier v Creighton* [1993] 2 NZLR 534, cited  
*Re: A Practitioner* [1941] SASR 48, cited  
*Sims v Craig Bell & Bond* [1991] 3 NZLR 535,

cited  
*Veghelyi v The Law Society of New South*  
 (1995) (unreported, NSW Court of Appeal, Kirby  
 P, Mahoney and Priestly JJA, 6/10/1995), cited  
*Vincent Cofini* [1994] NSWLST 25, cited

### **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*.

### **REASONS FOR DECISION**

- [1] Chandrika Achala Devi Urban was admitted to practise as a solicitor in Queensland on 17 November 1997. She is now 45. She has not held a current practising certificate since 30 June 2011. In November 2012 the Legal Services Commissioner brought disciplinary charges involving 15 various counts against her.
- [2] She has never filed a Response, or appeared at the directions hearings held in QCAT in the matter on 13 March and 27 May 2013. She has not informed the Commissioner or the Queensland Law Society of her address and correspondence to her last known address (including correspondence from QCAT) has been returned although there is some evidence that some material from the Commissioner may, in the past, have reached her. In any event an order for substituted service of the discipline application was made on 13 March 2013 and, in accordance with that order, notice of the application was advertised in the Courier Mail.
- [3] By direction, the Tribunal met to consider the matter after receiving affidavit evidence and written submissions from the Commissioner. Nothing in the way of evidence or submissions has been received from Ms Urban.
- [4] The charges against her are wide ranging, and serious. They arose from a number of complaints made to the LSC between December 2009 and November 2011 and include allegations that Ms Urban charged excessive legal costs, breached an undertaking, illegally transferred funds from her trust account, failed to properly administer that trust account, misappropriated trust funds, borrowed money from a client, failed in her professional obligations to her clients, and failed to comply with numerous notices issued in the course of investigations by the Law Society, and the Commissioner.
- [5] The charges relate to four different clients. The first group concern Dr Kerry Coakley who instructed Ms Urban in a claim for damages for personal injuries. She purported to charge her client almost \$120,000 for legal costs and, from settlement funds received into her trust account, transferred \$117,675.04 from that trust account to her general account in

payment of those fees. The client insisted upon an assessment of Ms Urban's costs, and they were assessed at about \$54,000. The first three counts relate to charging excessive legal costs, transferring the funds to her general account when the client had disputed her costs and requested an itemised bill, and failing to respond to a notice under s 443(3) of the *Legal Profession Act 2007* (Qld) (LPA).

- [6] The fourth, fifth and sixth charges relate to a failure to properly manage and administer her trust account in a number of matters, failing to comply with an undertaking she gave the Law Society to provide monthly trust account reconciliations on the 12th day of every month and, again, failing to comply with a notice under s 443(3).
- [7] The seventh charge relates to the misappropriation of \$1,713 from another client, Michaela Wavell-Smith, who paid that sum to the solicitor to be held on trust against fees from an expert medical witness. The funds were in fact paid to Ms Urban's general account, and never transmitted to the doctor. The eighth charge is, again, a failure to comply with a notice about that matter under s 443(3).
- [8] The ninth and tenth charges are in a similar vein. Ms Urban obtained \$6,185 from her client, John Tiplady, on account of medical assessment and report fees but, again, did not pay them into her trust account. In fact, no medical examination was ever undertaken.
- [9] Charge 11 relates to another failure to comply with a notice under s 443(3) concerning Zdravko Rjnak and his complaint to the Commissioner. Charge 12 is of a similar kind, in relation to another client, Dean Billings.
- [10] Charge 13 also relates to Mr Billings and arises from the fact that Ms Urban borrowed \$50,000 from him. She drafted the loan agreement but did not suggest to Mr Billings that he obtain independent legal advice. Under the agreement she was to repay the loan in six months at an interest rate of 6.99 per cent, plus a further cash payment of \$10,000. In fact she only ever made three payments totalling \$14,000 and the balance of the debt remains due and owing. Unsurprisingly, Mr Billings says this unhappy event has aggravated his depressive condition.
- [11] The fourteenth charge relates to her failure to insist that Mr Billings obtain independent legal advice. The fifteenth charge arises from the obvious conflict of interest generated by these circumstances.
- [12] Six of the charges<sup>1</sup> relate, then, to a failure to respond to written notices under s 443(3) of the LPA given to Ms Urban by the Commissioner. Under that provision an Australian legal practitioner is taken to have committed *professional misconduct* (a term defined in s 419 of the LPA) where there is a failure of compliance. Failures of this kind, on such a scale, illustrate something close to contempt for the practitioner's obligations under the

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<sup>1</sup> Counts 1, 6, 8, 10, 11 and 12.

LPA. No excuse has been proffered and it is improbable that any reasonable excuse for non-compliance could exist.

- [13] Gross overcharging of the kind alleged in count two will constitute professional misconduct if the prevailing circumstances, and the degree of overcharging warrant a finding to that effect (rather than the lesser offence of *unsatisfactory professional conduct*, under s 418 of the LPA).
- [14] The offending here involved an attempt to charge more than double the amount subsequently found to be fair and reasonable after a proper assessment, and to take those moneys from an injured client. As observed elsewhere, clients are entitled to protection against any abuse of the advantage solicitors may hold by their ability to inform themselves of the work that is required in any particular matter, and what are fair and reasonable charges.<sup>2</sup>
- [15] Charges seven and nine relate to the misappropriation of trust funds in a total amount of \$7,898. In regard to two clients Ms Urban was in breach of s 248 of the LPA which stipulates that as soon as practicable after receiving trust money, a practitioner must deposit the money in a general trust account of the practice.
- [16] Charge three also involved a breach of rules relating to trust accounts<sup>3</sup>: a very large amount (\$117,675.04) was wrongly transferred from Ms Urban's trust account to her law practice general account in payment of legal costs when the amount of those costs was in dispute.<sup>4</sup>
- [17] Charge five involves a range of failures to properly administer and manage the trust account in accordance with the standards of competence and diligence to be expected of a reasonable legal practitioner. Solicitors' trust accounts, it has been said, should be held as '*... sacred, so that moneys paid into the account should only be paid out to the persons to whom the money belonged, or as directed*'.<sup>5</sup>
- [18] On 30 June 2009, Ms Urban gave the Law Society an undertaking, signed by her, to provide monthly trust account reconciliations on or before the 12th day of every month until the Society advised her that it no longer required her to do so. She did not provide the reconciliation for September 2009 until early November that year and, then, did not provide any further monthly trust reconciliations until August 2010. Rule 6.1 of the *Australian Solicitor Conduct Rules 2012* states '*... that a solicitor who has given an undertaking in the course of legal practice **must** honour the undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient*' (emphasis added). There is no evidence to suggest the Law Society's undertaking was ever released.

<sup>2</sup> *Vegheli v The Law Society of New South* (1995) (unreported, NSW Court of Appeal, Kirby P, Mahoney and Priestly JJA, 6/10/1995) at [9] per Mahoney JA.

<sup>3</sup> See generally, Part 3.3 of the *Legal Profession Regulation 2007* (Qld).

<sup>4</sup> *Ibid* s 58.

<sup>5</sup> *Re: A Practitioner* [1941] SASR 48 at 51; and, see, *Legal Services Commissioner v Twohill* [2005] LPT 001 at 4.

- [19] Like trust accounts, solicitors' undertakings may be said to have something approaching sacred elements. They are personal to the legal practitioner who gives them, and bind that practitioner as a matter of professional conduct and comity. They are integral to the proper functioning of the legal system – without enforcement, persons and courts would be unable to rely on the word of a legal practitioner and the aspect of legal practice that demands compliance would collapse.<sup>6</sup>
- [20] Here, the failure was both immediate, and then prolonged. The misconduct inherent in non-compliance with the undertaking involves, in the words of s 419, a substantial failure to reach or keep a reasonable standard of competence and diligence and must, therefore, be categorised as professional misconduct.
- [21] Rule 86(1) of the *Queensland Law Society Rules 1987*<sup>7</sup> is in clear terms: it specifies that a practitioner shall not borrow money from a client. Under r 124 any person contravening that provision is guilty of an offence and may be prosecuted similarly under the *Justices Act 1886–1987*.
- [22] The circumstance in which a practitioner borrows from a client has been described as one which will almost inevitably generate conflict between the interests of the practitioner, and that of the client.<sup>8</sup>
- [23] The author of an important text in this area, G E Dal Pont<sup>9</sup>, suggests that there are circumstances in which a lawyer may deal with a client, but only when there has been full candour and disclosure from the practitioner who must, also, have taken steps to ensure that the client has given a fully informed consent to the transaction. Ensuring that the client obtains independent legal advice is, unsurprisingly, generally seen as an important step to the obtaining of that informed consent.<sup>10</sup> The onus of ensuring that independent legal advice is obtained rests upon the lawyer.<sup>11</sup> In Queensland, it has been said that the advice to the client to obtain independent legal advice should almost always be in writing, as should an acknowledgement from the client that independent legal advice has actually been obtained.<sup>12</sup>
- [24] In *Podmore* the practitioner had failed to advise his client (a Russian businessman, with very little English) to obtain independent legal advice in respect of an allocation of shares in the client's company to a company controlled by the solicitor's wife. The allocation had been made at the solicitor's suggestion. The Chief Justice referred to the solicitor exploiting the client's reliance upon him for indirect personal advantage, aggravated

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<sup>6</sup> *Vincent Cofini* [1994] NSWLST 25 at 6.

<sup>7</sup> These Rules were in force when the relevant conduct occurred.

<sup>8</sup> *Law Society of New South Wales v Harvey* [1976] 2 NSWLR 154 at 171 per Street CJ.

<sup>9</sup> *Lawyers' Professional Responsibility* (Thomson Reuters, 3<sup>rd</sup> ed, 2006).

<sup>10</sup> *Ibid* 245.

<sup>11</sup> *Sims v Craig Bell & Bond* [1991] 3 NZLR 535 at 547; *Official Assignee of Collier v Creighton* [1993] 2 NZLR 534 at 537.

<sup>12</sup> *Legal Services Commissioner v Podmore* [2006] LPT 005 at [27].

by the client's special reliance because of his own unfamiliarity with the English language.<sup>13</sup>

- [25] There is no evidence here of any attempt by the practitioner to observe any of the recognised proprieties. In the absence of any mitigating circumstances the offending involves all of the abuses identified in the cases as telling against transactions of this kind between a solicitor and her own client – aggravated by prompt default which has, now, continued for six years. It is a reasonable, and indeed a compelling, inference that Ms Urban had no real intention of repaying all of the funds when she borrowed them. In any event it is apparent she has made no genuine attempt at repayment and that, now, the money is lost to the client, Mr Billings. Whatever her state of mind or intentions these elements cast, in retrospect, a sinister pall over her failure to comply or, apparently, make any attempt to comply with the necessary requirements. This count involves conduct which justifies a finding that Ms Urban is not a fit and proper person to engage in legal practice – i.e. that the offending involves *professional misconduct* under s 419(1)(b) of the LPA.
- [26] The Commissioner contends that in light of the number of offences, and their serious nature, the only appropriate sanction is to recommend that Ms Urban's name be removed from the local roll. That penalty will be considered where the Tribunal comes to the view that a practitioner should no longer be held out as fit to practice – i.e. whether they remain a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to a solicitor.<sup>14</sup>
- [27] The legal profession necessarily aspires to the highest standards of integrity.<sup>15</sup> The evidence presented by the Commissioner is persuasive that Ms Urban has been guilty of misappropriating her client's funds, breaching an undertaking, failing to properly maintain her trust account, obtaining loan funds from a client in a way which breached her professional obligation, overcharging and failing to respond in a professional and timely manner, or at all, to notices properly issued to her under the legislation which governs the good, effective conduct of the legal profession.
- [28] In sum her offending can only be categorised as misconduct which clearly violates or falls shorts, to a substantial degree, of the standards of professional conduct observed or approved by members of the profession of good repute and competency. She has committed serious breaches of the honesty and trust that go to the heart of a solicitor's professional obligations to clients.
- [29] It would, the Tribunal accepts, significantly undermine public confidence in the legal profession if Ms Urban continued to be held out as a fit and

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<sup>13</sup> Ibid [35].

<sup>14</sup> *Council of the Queensland Law Society Inc v Whitman* [2003] QCA 438 at [37].

<sup>15</sup> *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279.

proper person. Removal from the roll is, plainly, compelling and necessary.

- [30] The Commissioner also seeks costs, as he is entitled to do under s 462 of the LPA. The amount sought, \$2,500, is plainly modest in light of the work involved in investigating the numerous, various charges against Ms Urban and preparing and prosecuting this discipline application.
- [31] Notice has been given by Mr Tiplady of intention to seek compensation under s 464 of the LPA. He has provided a statutory declaration relating how he engaged Ms Urban to act for him in a claim for damages for personal injuries suffered as a result of an assault by a male passenger in the course of his work as a bus driver. He describes increasing difficulty contacting and obtaining advice from Ms Urban and, when he was able to speak to her, odd and inexplicable advice in which she forbade him from submitting claim forms to his employer's workers compensation insurer.
- [32] Then, at her request, he paid money into what he thought was her trust account for medico-legal examinations and reports but, later, she cancelled the appointments with specialists without explanation, never provided new dates, and failed to prosecute his claim. His application is, with respect, not entirely clear and he appears to be claiming something in the form of damages for additional suffering caused, he says, by Ms Urban's misconduct.
- [33] Under the LPA an award of compensation cannot exceed \$7,500 without the practitioner's (and the applicant's) consent.<sup>16</sup> Count nine shows a misappropriation of \$6,185 paid by Mr Tiplady to Ms Urban for particular purposes but never deposited into her trust account and, of course, never paid out for that purpose – to reimburse medical practitioners. In the circumstances it is apparent that Mr Tiplady is entitled, at least, to compensation reimbursing him for that sum and there will be an order that Ms Urban pay that sum to him by way of compensation under the LPA within 30 days.

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LPA s 466(3).