SUPREME COURT OF QUEENSLAND

CITATION:	*Puryer v Legal Services Commissioner* [2012] QCA 110
PARTIES:	**TERENCE ROBERT PURYER** (applicant) **v** **LEGAL SERVICES COMMISSIONER** (respondent)
FILE NO/S:	Appeal No 2131 of 2012 QCAT No LPD011-09
DIVISION:	Court of Appeal
PROCEEDING:	Stay Application
ORIGINATING COURT:	Queensland Civil and Administrative Tribunal
DELIVERED ON:	20 April 2012
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on 11 April 2012 Further written submissions received on 13 April 2012
JUDGES:	White JA
ORDER:	**1. Application for stay refused.** **Ex tempore orders made on 20 April 2012:** **2. The applicant pay the respondent's costs of and incidental to the application for stay including the appearance on 11 April 2012, and the costs of perusing the submissions of the applicant filed on 13 April 2012.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – where applicant, a solicitor, appeared as a party for ex parte orders before the Supreme Court of Queensland – where Court of Appeal referred applicant's conduct in those proceedings to the Legal Services Commissioner – where Queensland Civil and Administrative Tribunal ('QCAT') found applicant deliberately misled Supreme Court and failed in his obligations of frankness and candour – where applicant removed from the roll of practitioners – where applicant seeks stay of orders – whether cogent reason for stay – whether prejudice to applicant outweighs public interest *Legal Profession Act* 2007 (Qld), ch 4, s 417(1), s 452

Legal Services Commissioner v Baker (No 1) [2006] 2 Qd R 107; [2005] QCA 482, cited
Legal Services Commissioner v Puryer [2012] QCAT 48, cited
New South Wales Bar Association v Stevens [2003] NSWCA 95, cited
Puryer v Webb & Ors [2008] QCA 246, cited
Robb & Anor v The Law Society of the Australian Capital Territory, unreported, Federal Court, No ACT G 34 of 1996, 21 June 1996, cited

COUNSEL: The applicant appeared on his own behalf
K C Kelso for the respondent

SOLICITORS: The applicant appeared on his own behalf
Legal Services Commission Legal for the respondent

[1] Mr Puryer filed an application to stay the orders of the Queensland Civil and Administrative Tribunal ("the Tribunal") made after hearing a discipline application brought by the Legal Services Commissioner. The decision was delivered on 2 February 2012 but not received by Mr Puryer until 11 February 2012. He filed his application on 7 March 2012. The Commissioner does not contend that Mr Puryer is not within the time limited by the rules for bringing his appeal.

[2] Mr Puryer also seeks leave to appeal "to the extent to which leave is required" a decision of the Tribunal dated 25 August 2010 on an interlocutory application in those disciplinary proceedings regarding the admissibility of certain affidavit material. Mr Puryer's proposed Notice of Appeal is attached to that application.

[3] The Deputy Registrar Appeals directed a timetable for the hearing of the stay which was set down for 11 April 2012. Mr Puryer's material was to be filed and served by 4 April 2012. That did not occur save that in support of his application for a stay Mr Puryer exhibited the orders and reasons of the Tribunal and the earlier orders and reasons of 25 August 2010 in the interlocutory application but no outline or other supporting material. The Commissioner has filed his response without the benefit of an outline from Mr Puryer. In correspondence to the Deputy Registrar Appeals dated 27 March 2012, Mr Puryer doubted that he would be well enough to conduct his application on 11 April 2012. However, he did attend court on that date with a proposed amended timetable for the filing of material for his stay application as well as a new appeal timetable. The Commissioner did not agree with this proposal, maintaining that the application for stay should be heard.

[4] After considerable discussion Mr Puryer agreed to provide his outline and any material in support by 2.00 pm, Friday 13 April 2012. Mr Kelso, counsel for the Commissioner, agreed to indicate whether the Commissioner would wish to file material in response. In the event he did not.

[5] The orders made by the Tribunal arose out of three disciplinary charges preferred against Mr Puryer pursuant to s 452 of the *Legal Profession Act* 2007 (Qld), that he was guilty of unsatisfactory professional conduct and/or professional misconduct.

[6] The Tribunal upheld two of the three charges and ordered Mr Puryer's name be removed from the roll of local practitioners and ordered him to pay the

Commissioner's costs of and incidental to the charges in respect of which he was found guilty. The charges were that on two occasions on 13 December 2007 he misled the Supreme Court of Queensland (in the person of Daubney J) and, on that day, he failed to meet his obligation of frankness and candour to the court.

[7] At the time Mr Puryer did not hold a current practising certificate from the Queensland Law Society and was not in practice as a solicitor. In the proceedings before Daubney J he appeared for himself as a party in those proceedings. Nonetheless, he was still amenable to a discipline application because he was at that time an Australian Lawyer, and ch 4 of the *Legal Profession Act* 2007 applies the complaint and disciplinary provisions of that legislation to a person's conduct "… while they were Australian Lawyers".[1]

[8] Before the Tribunal the Commissioner accepted that because Mr Puryer was acting in a private capacity in the proceedings before Daubney J, it was not a case in which there could be a finding of unsatisfactory professional conduct but that the charges amounted to professional misconduct.

[9] It is necessary to say something only briefly about the origin of these charges. They arose out of the breakdown of Mr Puryer's relationship with a Ms Sharlene Coombs and their shared obligations as tenants in residential premises under a 12 month lease which commenced in February 2006. The lease contained a term that each tenant may, by notice in writing, exercise an option to renew the lease for a further 12 months. In about mid-2006 Ms Coombs offered to pay to the letting agent of the lessor an amount representing 40 per cent of the rental payable for the unexpired balance of what was, at the time of payment, a 12 month lease. Her offer, as stated by this court in *Puryer v Webb & Ors*[2], reflected the circumstances that at the time she had contributed 40 per cent to the outgoings of the house. On the same day Mr Puryer purported to exercise the option to renew the lease from February 2007 to February 2008. Ms Coombs immediately notified him that she did not consent to any renewal of the lease. He remained in occupation of the house.

[10] The complex proceedings subsequent to those events are set out in *Puryer v Webb*.[3]

[11] Ms Coombs commenced proceedings in the Small Claims Tribunal seeking to be released from her obligations under the lease on the basis of excessive hardship. The Small Claims Tribunal made an order on 28 June 2006 removing her from the lease. That order was made without notice to Mr Puryer. On the same day Ms Coombs paid 40 per cent of the rent payable until 2 February 2007 to the lessor's leasing agent. Subsequently the lease was terminated on the grounds of rental arrears in different Small Claims Tribunal proceedings between the letting agent and Mr Puryer.

[12] Mr Puryer had commenced proceedings in the Supreme Court for judicial review of the first decision of the Small Claims Tribunal removing Ms Coombs from the lease. He sought to have that order quashed or reconsidered.

[13] Mr Puryer had obtained Ms Coombs' consent to abide the orders of the court and, with one qualification, to take no further part in the proceedings. The court ordered that she produce some documents but otherwise she was granted leave to withdraw with the right to be heard on the question of costs being reserved.

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1 s 417(1).
2 [2008] QCA 246.
3 At [4]-[10].

[14] In February 2007 Mr Puryer amended his proceedings in the Supreme Court to include a claim for relief in respect of the February 2007 order of the Small Claims Tribunal.

[15] In December 2007 Mr Puryer filed an amended application in the Supreme Court seeking an order that Ms Coombs idemnify him for one half of the rent, outgoings and services under the residential tenancy agreement. He served that application and an affidavit in support on Ms Coombs late on the date that he filed his amended application but he did not, as this court found, draw her attention to the significance of the new claim for relief against her which "was distinctly inconsistent with the spirit, if not the letter, of the contract reflected in the consent order of 22 December 2006."[4] Ms Coombs did not appear the following day when the matter came on for hearing to oppose the making of the order.

[16] This court's judgment and the Tribunal's disciplinary proceedings judgment relate that the transcript of the proceedings on 13 December 2007 shows that Mr Puryer handed Daubney J 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. That letter was from the letting agent to Mr Puryer which referred to Ms Coombs' payment, in advance, of 40 per cent of the rent for the balance of the term until February 2007. The transcript set out in this court's judgment suggests that Mr Puryer did not inform the judge of that payment.

[17] Daubney J made orders setting aside the two decisions of the Small Claims Tribunal and directed that Ms Coombs indemnify Mr Puryer against and pay him one half of each of the rent, outgoings and services paid or payable under the tenancy agreement. This court observed:

> "… it is inconceivable that his Honour would have made Order 4 [indemnifying Mr Puryer] if he had been informed that, in fact, Ms Coombs had paid 40 per cent of the rent payable for the balance of the original term, being the percentage which she considered was agreed between Mr Puryer and herself."[5]

This court found that his Honour clearly had some concerns because he directed that the order be served personally on Ms Coombs and the operation of the order be stayed until 14 days after personal service during which time Ms Coombs could apply to have the orders varied on two days written notice.

[18] Ms Coombs did not take that opportunity but applied to Dutney J in the Supreme Court on 27 February 2008 for an order setting aside Daubney J's order on the basis that it was made in her absence. Dutney J granted Ms Coombs' application and made an order for costs on the indemnity basis against Mr Puryer. It was from those orders that Mr Puryer appealed to this court.

[19] The court addressed the question whether or not Daubney J had been misled and whether any misleading, if it did occur, was deliberate. The court expressed its concern that 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

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4 *Puryer v Webb &* Ors [2008] QCA 246 at [11].

5 *Puryer v Webb &* Ors [2008] QCA 246 at [15].

> leaving it to the court to plough through a bundle of papers in order to discover relevant material adverse to his case."[6]

The court directed that the papers be sent to the Legal Services Commissioner for his consideration.

[20] The Tribunal noted[7] that the disciplinary proceedings moved slowly after commencement in the Supreme Court and after transfer to the Tribunal. It is unnecessary to set out that progress which may be found at paras [25]-[32] of the reasons of the Tribunal.

[21] Essentially, Mr Puryer submitted before the Tribunal that there was an error in the transcription of what he said to Daubney J on 13 December 2007 which was relevant to whether he had misled the court when he submitted that Ms Coombs had been given notice of "the" amended application. Mr Puryer's contention was that he told his Honour that she had been served with "an" amended application. The Tribunal did not regard that difference as critical. The Tribunal found that the amended application had been served on the previous afternoon on Ms Coombs, that her attention had not been drawn to the significance of the new claim for relief against her which was inconsistent with her earlier consent order and, although the affidavits exhibited the letter from the letting agent of July 2006 referring to Ms Coombs' payment in advance of 40 per cent of the rent, Mr Puryer did not draw that fact to the judge's attention.

[22] The Tribunal came to the same conclusion as this court earlier:

> "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."[8]

The Tribunal was satisfied that the second charge was misleading and aggravated because it was deliberate. The Tribunal further concluded that Mr Puryer failed to meet his obligations of frankness and candour to the Supreme Court, the subject matter of the third charge – which necessarily followed from the finding in respect of the second charge.

[23] As to penalty, the Tribunal noted that Mr Puryer had 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, being two breaches of the *Trust Accounts Act* 1973 (Qld) and *Trust Accounts Regulation* 1999 (Qld), 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 which were carelessly made. He was fined $30,000 and ordered to make his files available for audit at least four times in the subsequent two years and to attend a trust account management course.

[24] In September 2002 Mr Puryer was found guilty of a further four charges of professional misconduct – one involving a failure to render a bill of costs, one of

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6 At [31].

7 At [31].

8 *Legal Services Commissioner v Puryer* [2012] QCAT 48 at [55].

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 12 months and applied thereafter for an employee-only practising certificate for 12 months.

[25] The Tribunal concluded that the offending involved matters involving Mr Puryer's own interests in circumstances where he deliberately misled the court:

> "… 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 …"[9]

The Tribunal concluded that those factors dictated that Mr Puryer was not now a fit and proper person to remain on the roll of practitioners and his name should be removed.

Approach to an application for a stay of orders

[26] This court in *Legal Services Commissioner v Baker (No 1)*[10] set out the approach to an application for a stay where the applicant was a legal practitioner whose name had been ordered to be removed from the local roll. Chesterman J (as his Honour then was), with whose reasons McMurdo P and Helman J agreed, after referring to the judgment of Spigelman CJ in *New South Wales Bar Association v Stevens*[11] and the decision of Finn J in *Robb v The Law Society of the Australian Capital Territory*[12], said:

> "… [I]t should be accepted that an applicant for a stay of a recommendation that his name be removed from the roll of Legal Practitioners should show a cogent reason for the stay, and he will not do so merely by showing that he will be unable to practise his profession until his appeal is heard and allowed. Every practitioner who is suspended from practice or whose name is removed from the roll suffers that prejudice but it is clearly not right that a stay is, or should be, granted as a matter of course. Something more must be shown than 'prejudice' of this kind. The additional factors which would justify a stay must be such as outweigh the public interest in having unfit practitioners debarred from practice. That interest is to be afforded particular significance."[13]

[27] His Honour regarded it as instructive to consider the four factors which Finn J had mentioned in Robb as being relevant but not the only factors to a decision whether to grant a stay. They are:

- the seriousness of the misconduct found;
- the likely prejudice to public confidence in the integrity of the disciplinary process and the reputation of the profession if the practitioner is granted a stay;

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9 *Legal Services Commissioner v Puryer* [2012] QCAT 48 at [66].
10 [2005] QCA 482.
11 [2003] NSWCA 95.
12 Unreported decision Federal Court No ACT G34 of 1996 of 21 June 1996.
13 *Legal Services Commissioner v Baker* (No 1) [2005] QCA 482 at [28].

- the means available to mitigate the prejudice; and
- the expedition with which the appeal can be heard.

[28] Mr Puryer does not challenge that approach. His submissions focus on the prejudice which he would suffer if the stay was not granted. He submits that in the absence of a stay his prospects of obtaining and retaining gainful employment will be seriously prejudiced and he would suffer financial and emotional hardship. His health would then suffer if he were unable to obtain and retain gainful employment.[14] He draws a distinction between his position and that of the respondent in *Baker* in as much as he does not seek to continue in legal practice, noting that he has not done so since October 2002 and would give appropriate undertakings not to seek to practise.

[29] The prejudice, to which Mr Puryer deposes, advances what he said by way of foreshadowing his submission at the stay hearing on 11 April 2012. He told the court that he worked in gardening and landscaping occupations; since the delivery of the Tribunal's decision at the beginning of February 2012, he had noted the work had fallen away which he attributed to those who retained his services not wishing to continue to employ him. He has developed that foreshadowed submission in his affidavit filed on 13 April 2012. He deposed:

> "2. On 3rd October 2011, I commenced working in the Grounds Department of a large National and Listed company. I was undertaking work which had no connection with legal practice.
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> 3. My performance at the Company had received recognition and praise such that on 28th November 2011, I was promoted to the role of Supervisor and Team Leader which included a salary increase and provision of a company car for work and private use as well as other benefits including a mobile phone.
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> 4. On 26th March 2012, as a result of a personnel change, I applied for a senior Managerial position in the Company as I had received a specific request from the State and Regional Manager to make the application. As part of my application, I disclosed my prior legal practice and history although recognition as a legal practitioner was not a requirement. Accordingly, it came as a surprise that not merely was my application not properly addressed but that my employment was determined on 3rd April 2012 without cause. My previous legal practice (as well as the QCAT proceedings) had not, prior to my application for the senior Managerial position, arisen as these were not directly germane to the work which I had undertaken. I surmise from the circumstances that the decision of QCAT of 2nd February 2012 and more particularly the order that my name be removed from the roll was the genesis for the decision to terminate my employment.
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> 5. I am unable for legal reasons to disclose further information about the work or determination but suffice it to say that

[14] Outline of submissions, para 8.

> I believe that the decision to terminate my employment would not have been made but for the operation of the order to remove my name from the roll. ..."

Conclusion

[30] As Mr Puryer recognises, an applicant for a stay has the burden of satisfying the court that the discretion to grant the stay ought to be exercised. He acknowledged the ordinary principle that a successful party is entitled to enjoy the fruits of the judgment and there must be sound reasons to justify the suspension of the judgment orders. Those general statements of principle must be read against the further elaboration of principle which applies when the provisions of the *Legal Profession Act* 2007 come into play. It is true that Mr Puryer does not seek, as was the case in *Baker*, to practise as a lawyer pending the hearing and determination of his appeal. Nonetheless, he does seek to maintain his status as an Australian lawyer and some, at least, of the concerns express in *Baker* and *Robb* and *Stevens* would apply.

[31] It is difficult to give much weight to Mr Puryer's assertions about his employment. The nature of his employment, as mentioned in the court on 11 April 2012 as a gardener/landscaper, seems rather different from the managerial position which he believed that he was being invited to apply for with an un-named company on 26 March after the Tribunal had given its decision. There is no basis for supposing that the proposed employer had any knowledge of that decision. If that employer did, it is as likely that it was the previous disciplinary proceedings, which are set out in detail in the Tribunal's decision, as the order to remove from the roll of local practitioners which prompted any withdrawal of future employment.

[32] As to the merits which Mr Puryer asserts are strong, the court will be cautious about expressing any concluded view. However, despite the optimism of Mr Puryer, the prospects of his appeal do not look promising. The findings of the Tribunal appear to me to have been open on the evidence.

[33] The progress of Mr Puryer's previous proceedings and his difficulty in maintaining the timetable for bringing his appeal to hearing do not suggest the appeal will come on quickly but that is due entirely to Mr Puryer's own circumstances.

[34] I am not persuaded that the nature of the prejudice which Mr Puryer would suffer has been identified with that fullness and frankness which might be expected of an applicant for a stay.

Order

[35] I refuse the application for a stay of the orders of the Queensland Civil and Administrative Tribunal made on 2 February 2012.