

**CITATION:** *Legal Services Commissioner v Scott* [2016] QCAT 99

**PARTIES:** **LEGAL SERVICES COMMISSIONER**  
**(Applicant/Appellant)**  
**v**  
**KARL SCOTT**  
**(Respondent)**

**APPLICATION NUMBER:** OCR244-13

**MATTER TYPE:** Occupational Regulation Matter

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Carmody**

**DELIVERED ON:** 11 May 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **THE TRIBUNAL ORDERS THAT:**

- 1. Karl Scott is to pay the complainant, Mr Grant Wilson, the amount of seven thousand five hundred dollars (\$7,500) in compensation within thirty (30) days.**

**CATCHWORDS:** PROFESSIONS AND TRADES – LEGAL PRACTITIONERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – REMEDIES – COMPENSATION ORDER – where the respondent was found to have committed professional misconduct for misappropriating the complainant’s trust moneys – where the complainant filed an application for compensation – whether the complainant should be compensated for pecuniary loss caused by the respondent

*Legal Profession Act 2007 (Qld) s 456(4)(b), s 464(d), s 465, s 466(3), Schedule 2*  
*Queensland Civil and Administrative Tribunal*

Act 2009 (Qld) s 32  
*Scott v Legal Services Commissioner* [2015]  
 QCAT 402

**APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers without the attendance of either party in accordance with s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (“QCAT Act”).

**REASONS FOR DECISION**

- [2] The complainant, Mr Grant Wilson, has requested a compensation order from the Tribunal in respect of the respondent’s professional misconduct in dissipating \$82,000.00 of trust monies. The circumstances can be found in *Scott v Legal Services Commissioner* [2015] QCAT 402.<sup>1</sup>
- [3] At the QCAT hearing of 10 January 2016, Mr Wilson adduced several pieces of evidence in seeking a compensation order. However, no affidavit material was filed regarding compensation, and I was not satisfied there was sufficient evidence to find the full value of the \$82,471.86 was misappropriated, or any amount had already been reimbursed or recovered.
- [4] It was, however, in the interests of justice to provide Mr Wilson an opportunity to file further submissions.
- [5] He has since filed a new affidavit, of which I am satisfied paragraphs 27-29, especially exhibits “GW8”-“GW11”, sufficiently evidence his entitlement to compensation and that he was unable to claim compensation from the Queensland Law Society Fidelity Fund as the respondent was not registered with the Society at the time of his professional misconduct.<sup>2</sup>
- [6] The current claim for compensation is made pursuant to s 464 of the *Legal Profession Act 2007 (Qld)*.
- [7] The Tribunal may order that a law practice pay compensation to a complainant for pecuniary loss suffered due to the conduct of a legal practitioner involved in the relevant practice.<sup>3</sup>
- [8] However, unless the parties agree otherwise, a compensation order cannot be made unless the Tribunal is satisfied:
- a. the complainant has suffered pecuniary loss because of the respondent’s professional misconduct; and
  - b. it is in the interests of justice that a compensation order be made.<sup>4</sup>

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<sup>1</sup> At [13] – [41].

<sup>2</sup> See *Legal Profession Act 2007(Qld)* s 465(2)(b).

<sup>3</sup> *Ibid* ss 456(4)(b),464(d)(ii) and Schedule 2, Dictionary. A “law practice” includes a sole practitioner, as Mr Scott was at the time of his professional misconduct.

<sup>4</sup> *Ibid* s 465.

- [9] Mr Wilson has undoubtedly suffered a pecuniary loss because Mr Scott's conduct was found to constitute professional misconduct. It is therefore in the interests of justice to make a compensation order in Mr Wilson's favour.
- [10] A compensation order for pecuniary loss of an amount more than \$7,500 cannot be made unless the respondent consents to this order.<sup>5</sup>
- [11] There is some contention as to which party should actually be required to consent to the order. Mr Wilson submits that the law firm Raj Lawyers held out Mr Scott to be its employee, and Mr Scott in turn held out that the monies were being held in Raj Lawyers' trust account.
- [12] In material provided to this Tribunal, Mr Wilson has admitted "(Raj) were not involved in the events that took place, they happened prior to Scott joining Raj".
- [13] Conflictingly, Mr Wilson has provided evidence in his affidavit of the transferral of his monies into the trust account of "Lucid Law", not of Raj Lawyers. There is no indication Mr Wilson and his associated business entities were Raj Lawyers' clients.
- [14] I am not satisfied Mr Wilson believed Raj Lawyers exercised control over his trust monies, but rather believed at all times they were under the respondent's control. In any case, Raj Lawyers do not consent to compensating Mr Wilson as they argue they had nothing to do with his loss.
- [15] There is no evidence that the respondent consents to the making of an order for the full amount of the claim and there is no reason to believe it will be given in the future.
- [16] The Tribunal is therefore limited to ordering the respondent to pay a maximum of \$7,500 in compensation, and I order accordingly.

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<sup>5</sup> *Legal Profession Act 2007(Qld)* s 466(3).