

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Dominic* [2020] QCAT
124

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

v

JASMINE DOMINIC
(respondent)

APPLICATION NO/S: OCR228-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 27 March 2020 (*ex tempore*)

HEARING DATE: 27 March 2020

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Dr John de Groot, Legal Panel Member

Dr Julian Lamont, Lay Panel Member

ORDERS:

- 1. It is recommended that the name of the respondent, Jasmine Dominic, be removed from the roll of legal practitioners in Queensland.**
- 2. The matter is otherwise adjourned to a date to be fixed for further directions.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the respondent is charged with failing to bank trust monies into a trust account – where the respondent is charged with engaging in legal practice as a sole practitioner in contravention of the conditions on her unrestricted employee practising certificate – where the applicant Commissioner seeks a finding that this conduct amounted to professional misconduct and that the respondent's name be removed from the roll of legal practitioners in Queensland – where the respondent has received notice of the hearing and indicated that she does not intend to appear – where the respondent previously applied to the Supreme Court of Queensland seeking an order that her name be removed from the roll while this

discipline application was pending – where that application was dismissed – whether the conduct constitutes professional misconduct under s 419 of the *Legal Profession Act 2007* (Qld) – whether to recommend that the respondent’s name be removed from the roll of legal practitioners in Queensland

Legal Profession Act 2007 (Qld) s 58, s 237, s 248, s 418, s 419

**APPEARANCES &
REPRESENTATION:**

Applicant: D de Jersey QC instructed by the Legal Services Commission

Respondent: No appearance

REASONS FOR DECISION

- [1] By this discipline application under the *Legal Profession Act 2007* (Qld) (*LPA*), the applicant, the Legal Services Commissioner, has brought two charges against the respondent, Jasmine Dominic. The first charge is that she contravened s 248 or, alternatively, s 58 of the *LPA* when receiving payments from a client called Ms Smith. The second charge is that she contravened s 58 of the *LPA* by engaging in legal practice as a principal at a time when she did not have an unrestricted open practising certificate and was practising in contravention of conditions imposed on an unrestricted employee practising certificate.
- [2] Much of the background is set out in a joint statement of admitted facts that was filed in the Tribunal and signed by the representatives for both parties in July 2019. I should note that the respondent received notice of today’s hearing and has indicated to the Tribunal that she does not intend to appear to contest today’s application. I should also note that it is a matter of record that the respondent herself previously, and while this discipline application was pending, made an application to the Supreme Court of Queensland for an order that her name be removed from the roll. Given the pendency of the current discipline application, that application was dismissed. It is clear, however, that the respondent does not now mount any substantive challenge to the application or the orders sought by the Commissioner.
- [3] In brief, the background facts are that the respondent was admitted to practice as a legal practitioner of the Supreme Court of Queensland on 29 January 2013. She was employed as a solicitor with a number of practices from 1 February 2013 until 9 December 2015. At that time, she was employed by a firm known as Suffolk Law.
- [4] From 10 December 2015 until 31 December 2016 the respondent was the sole practitioner of the law practice ‘Enlightened Justice’. From 18 October 2016 until 31 January 2017 she was the ILP legal practitioner director of ByTheRules Conveyancing Proprietary Limited. From 1 January 2017 to 30 June 2018 she was an ILP legal practitioner director of Simpliciter Legal Solutions, and then after 1 July 2018 she was an ILP executive officer and non-practitioner director of Simpliciter Legal Solutions.
- [5] In terms of practising certificates, the respondent’s relevant history is that:

- (a) from 1 February 2014 to 14 April 2015 she held a restricted employee practising certificate issued by the Queensland Law Society on certain conditions;
 - (b) from 15 April 2015 to 9 December 2015 she held an unrestricted employee practising certificate issued by the Queensland Law Society on certain conditions, including that she not practise as a principal in private practice without also complying with the *Legal Profession (Society) Rules 2007* and having complied with the eligibility requirements for a principal practising certificate as provided for in the *Queensland Law Society Administration Rule 2005*; and
 - (c) from 10 December 2015 to 30 June 2018 she held a principal practising certificate issued by the Queensland Law Society.
- [6] The background to the charges can be summarised as follows. From March 2014 the respondent provided legal services to a client, Ms Smith, whom she met on numerous occasions for the purposes of taking instructions. The matter with which the client was engaged, and in respect of which the respondent was providing legal advice and assistance, concerned issues that the client was having with the Westpac Bank. At the request of the respondent, and on various dates, the client paid the respondent various amounts both in cash and by direct debit. At the time that each of those payments was made by the client to the respondent, no bill or invoice had ever been issued by the law firm which then employed the respondent in relation to each payment.
- [7] The details of the payments and the accounts into which those monies were paid are set out in the material before the Tribunal. It is quite clear that none of those payments were paid into a trust account, let alone into the trust account of the law firm which was the respondent's employer at the time she received those payments.
- [8] Additionally, on 10 August 2015, and at a time while she was still employed by Suffolk Law, the respondent, while attending a mediation between the client and Westpac, informed the representative of Westpac that payment of a settlement sum of \$20,000, which was to be paid by the bank to the client, should be made payable to Enlightened Justice.
- [9] At that time, the respondent also told the client that her fee for attending the mediation was to be paid to Enlightened Justice. As a consequence, on 25 August 2015, the respondent received a cheque in the sum of \$20,000 made payable to Enlightened Justice and then deposited that cheque into an account operated by the respondent in the name of Enlightened Justice. That sum of \$20,000 was received by the respondent as the agent of the client. At the time the respondent received that cheque of \$20,000, the respondent's then employer, Suffolk Law, had not issued the client with any invoice for any legal services rendered and the respondent had not issued the client with any invoice for any legal services rendered.
- [10] Clearly enough, the bank account in the name of Enlightened Justice into which those monies were banked was not a 'trust account' as defined by s 237 of the *LPA*. The matters that have just been summarised sufficiently set out the factual basis on which charge 1 is founded.
- [11] In respect of charge 2 there is, both on the statement of admitted facts and the affidavit material before the Tribunal, sufficient evidence for the Tribunal to conclude that the respondent engaged in legal practice as a sole practitioner in

contravention of the condition which was imposed upon her then unrestricted employee practicing certificate. In particular, she sent a letter on an Enlightened Justice letterhead on 28 August 2015, and as previously mentioned received the \$20,000 settlement sum into the account of Enlightened Justice, all while she held that unrestricted employee practicing certificate.

- [12] It is necessary to characterise the respondent's conduct for the purposes of determining the charges brought by the applicant Commissioner and, for that purpose, the Tribunal has had regard to the non-inclusive definitions of 'unsatisfactory professional conduct' and 'professional misconduct' set out in ss 418 and 419 of the *LPA*.
- [13] The matters which are the basis of charge 1 are clearly serious. They involve a serious departure by a legal practitioner from the fundamental requirements of probity which must be observed when a solicitor is dealing with a client's money. It is essential for clients to be able to have utmost faith and confidence in their solicitors when entrusting the solicitors with their money. It is similarly vital, in order to maintain public confidence in the profession, that solicitors ensure that monies paid to them are strictly accounted for, strictly traceable and strictly dealt with according to law. The respondent's conduct in relation to the receipt of monies in cash and by direct transfer, which ought have been paid into a trust account but which were not, represented serious and repeated breaches of those fundamental legal and fiduciary obligations which a solicitor owes to a client to protect and safeguard a client's money.
- [14] Whilst of a lesser category, the conduct of this respondent in acting or purporting to act as a sole practitioner at a time when she did not hold the necessary regulatory permission to do so is also a serious matter. The vocational regulation of the profession is necessary in the public interest to ensure that practitioners who engage in practice on their own account demonstrably have the necessary qualifications, learning and experience to do so. That is why the Law Society rules allow for periods of gradation, during which employed solicitors may be given greater levels of responsibility, but always subject to the necessary and appropriate supervision to enable them to attain the necessary standards of experience and competence to allow them to practise in an unrestricted way. For a practitioner to flout the restrictions imposed on their practicing certificate, particularly in relation to dealings in client's money, is a matter that is and should be regarded as serious.
- [15] In the view of the Tribunal, the conduct of the respondent in this case is sufficiently serious to warrant a finding of professional misconduct. In particular, the conduct of the respondent amounted to breaches of the statutory and other legal requirements as to allow a finding that the conduct involves substantial and consistent failures to keep a reasonable standard of competence and diligence in connection with her practice as a solicitor. Accordingly, the Tribunal finds that the respondent engaged in professional misconduct.
- [16] It is necessary, then, to turn to the question of sanction. The applicant has urged for an order that the Tribunal recommend that the respondent's name be removed from the roll. As the Tribunal has already noted, there is no opposition to an order of that sort and, indeed, the respondent herself has effectively sought to circumvent the processes of this Tribunal by seeking an order to that effect from the Supreme Court. That being said, it is appropriate to note that the Tribunal regards the breaches committed by the respondent seriously. The purpose for imposing sanctions in this

jurisdiction is not punitive but is protective of the public. For the reasons stated earlier, the public does need to be protected against practitioners who do not have a full and proper appreciation of the high standards that are expected of them when dealing with client's money.

- [17] Nothing has been put before this Tribunal to dissuade it from a finding that the respondent lacks any proper insight into the nature and gravity of her defalcations. Those defalcations, for the reasons already given, themselves bespeak unfitness to practice. The practitioner has not put any material before the Tribunal to dissuade the Tribunal from making a finding that it is probable that the practitioner is permanently unfit to practice. Indeed, so much is effectively conceded in the circumstances to which reference has been made above. Accordingly, the Tribunal will order a recommendation for the respondent to be struck off.
- [18] Finally, the Tribunal notes that the client, Ms Smith, has filed an application for compensation. This Tribunal having found that the practitioner engaged in professional misconduct, the matter will be adjourned to a date to be fixed with the Tribunal to make directions for the future conduct of that application.