

# SUPREME COURT OF QUEENSLAND

CITATION: *Legal Services Commissioner v Beames* [2012] QSC 327

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)  
v  
**DOUGLAS MACLEOD BEAMES**  
(respondent)

FILE NO/S: SC No 9039 of 2012

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 24 October 2012

DELIVERED AT: Brisbane

HEARING DATE: 9, 12 October 2012

JUDGE: Philippides J

ORDER: **1. It is declared that the respondent is and was at all material times, a person who did “represent that he was entitled to engage in legal practice” whilst he was not an Australian legal practitioner, as referred to in s 25(1) of the *Legal Profession Act 2007 (Qld)* (“the LPA”).**

**2. Pursuant to s 703 of the LPA, the respondent is restrained from representing that he is entitled to engage in legal practice, when he is not an Australian legal practitioner, in contravention of s 25(1) of the LPA, and in particular is restrained from:**

**(a) Describing himself as a “lawyer”, “solicitor” or “legal practitioner” when witnessing documents.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – UNQUALIFIED PERSONS AND DISQUALIFIED PRACTITIONERS – GENERALLY – where the applicant applies for a declaration that the respondent represented that he was entitled to engage in legal practice when he was not an Australian legal practitioner – where the applicant applies for an injunction to restrain the respondent from engaging in legal practice when he is not an Australian legal practitioner – whether the respondent engaged in legal practice – whether injunctive relief should be granted pursuant to s 703 of the LPA.

COUNSEL: B McMillan for the applicant  
The respondent appeared on his own behalf

SOLICITORS: Crown Law for the applicant  
The respondent appeared on his own behalf

### **The application**

[1] The Legal Services Commissioner (“the applicant”) has brought an application pursuant to s 703 of the *Legal Profession Act 2007* (“LPA”) in respect of the respondent, Douglas Macleod Beames, for the following orders:

1. A declaration that the respondent is and was at all material times, a person who did “represent that he was entitled to engage in legal practice” whilst he was not an Australian legal practitioner, as referred to in s 25(1) of the Act.
2. An injunctive order restraining the respondent from representing that he is entitled to engage in legal practice when he is not an Australian legal practitioner, in contravention of s 25(1) of the Act, and in particular that he is restrained from:
  - (a) Describing himself as a lawyer, solicitor or legal practitioner when witnesses documents.

[2] The matter was listed for hearing on 9 October 2012. On that occasion, the respondent appeared and sought an adjournment of the application relying on submissions, *inter alia*, that the present proceedings were initiated by “the use and delivery of fake initiating documents”. While the matter was stood down, the respondent absented himself. It seems that the respondent left court, apparently indicating that he was unwell. In those circumstances, the application was adjourned to 12 October 2012, with the respondent being advised of that. On 12 October 2012, the respondent appeared and the hearing proceeded.

### **Did the respondent engage in conduct to which s 703 of the LPA applies?**

[3] Section 703 of the LPA provides:

#### **“703 Injunctions**

- (1) This section applies if a person (the *subject person*) has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—
  - (a) an offence against a relevant law; or
  - (b) attempting to contravene a relevant law; or
  - (c) aiding, abetting, counselling or procuring a person to contravene a relevant law; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a relevant law; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, an offence against a relevant law by a person; or

- (f) conspiring with others to contravene a relevant law.
- (2) On application by the commissioner or the relevant regulatory authority for the subject person, the Supreme Court may grant an injunction, on terms the court considers appropriate—
  - (a) restraining the subject person from engaging in the conduct; and
  - (b) if the court considers it desirable to do so—requiring the subject person to do any act or thing.
- ...
- (6) The Supreme Court’s power to grant an injunction restraining the subject person from engaging in conduct may be exercised whether or not—
  - (a) it appears to the court that the subject person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) the subject person has previously refused or failed to do that act or thing; or
  - (c) there is an imminent danger of substantial damage to anyone if the subject person refuses or fails to do that act or thing.
- (7) The Supreme Court must not require the commissioner or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.”

- [4] The applicant’s case is that the respondent engaged in conduct in breach of s 703(a) of the LPA, being conduct that constituted “an offence against a relevant law”. The relevant law relied upon is s 25 of the LPA.
- [5] On 4 November 2011 the applicant received information from the Registrar of Titles and Registrar of Water Allocations that the respondent had witnessed a Form 29 Profit A Prendre (Form 29) noting his witnessing qualification as a lawyer. The copy of the Form 29 exhibited to the affidavit of Mr Bowman shows it was witnessed by Douglas MacLeod Beames, the respondent, on 24 October 2011 and that the word “lawyer” typed in as the witnessing officer’s qualifications. At the hearing of the matter it was not disputed that the signature was that of the respondent.
- [6] It is clear, as the applicant submitted that, at the time the respondent witnessed the Form 29, he was not entitled to practice as a legal practitioner in Queensland or in any interstate jurisdiction. This is because, although the respondent was admitted to practice as a solicitor of the Supreme Court of Queensland on 10 October 1977, his name was removed from the roll of solicitors on 17 November 2003: *In the matter of Douglas Macleod Beames* [2003] SCT/114.
- [7] Mr Bowman’s file note of his telephone conversation with the respondent on 14 November 2011, which was exhibited to his affidavit, records that when Mr Bowman noted that the respondent had clearly identified himself as a lawyer on the form the respondent stated he was a lawyer and he was allowed to do this. In

correspondence with the applicant, the respondent claimed to act in his “role as a Commonwealth Public Official”.

- [8] Form 29 provides under the word “witnessing officer”, “(Witnessing officer in accordance with Schedule 1 of *Land Title Act* 1994 eg Legal Practitioner, JP, C Dec)”. Schedule 1 of the *Land Title Act* 1994 includes “lawyer” in the list of persons who can witness execution of instruments in a State, Territory or place outside Australia. The term “lawyer” is defined in the dictionary in Sch 2 of that Act to mean “an Australian lawyer who, under the *Legal Profession Act* 2007, may engage in legal practice in this State.”
- [9] Section 5(1) of the LPA defines “Australian lawyer” as “a person who is admitted to the legal profession under this Act or a corresponding law.” Section 6 of the LPA defines “Australian legal practitioner” as “an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate”. It is also pertinent to refer to s 24(1) of the LPA which prohibits a person from engaging “in legal practice in this jurisdiction unless the person is an Australian legal practitioner”. A contravention of that provision may result in pecuniary penalty or imprisonment.
- [10] It was submitted by the applicant that by operation of these provisions, only a person who is admitted to the legal profession in Australia, and who holds a local or interstate practising certificate, may witness a document under the *Land Title Act* 1994 as a “lawyer”. The applicant submitted that, the respondent’s name having been removed from the roll of solicitors in 2003, the respondent was not the holder of a current practising certificate. Therefore, the respondent was not entitled to identify himself as a “lawyer” when witnessing a document under the *Land Title Act* 1994. That is clearly correct.
- [11] The applicant argued that in identifying himself as a “lawyer” when witnessing the Form 29, the respondent represented that he was entitled to engage in legal practice, in breach of s 25 of the LPA. Section 25 of the LPA relevantly provides as follows:
- “25 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled**
- (1) A person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.
- Maximum penalty—300 penalty units or 2 years imprisonment.”
- [12] It was contended that s 25 was breached not only by the respondent’s use of the word “lawyer” as his witnessing qualification, but additionally, by the act of witnessing the document thereby representing an entitlement to engage in legal practice. Reference was made by the applicant to *Legal Services Commissioner v Walter* [2011] QSC 132, where Daubney J considered the meaning of “engage in legal practice” for the purposes of an application pursuant to s 703 of the LPA in similar terms to the present case but dealing with a breach of s 24 rather than s 25. His Honour applied the decision of *Cornall v Nagle* [1995] 2 VR 188 at 5 and 6:
- “More recently, in *Cornall v Nagle*, Phillips J, in construing the *Legal Profession Practice Act* 1958 (Vic), identified that a person who was neither admitted to practice law nor enrolled as a barrister

and solicitor may be regarded as acting or practising as a solicitor in one of three ways:

1. By doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person doing it is a solicitor;
2. By doing something that is positively proscribed by legislation or rules of court unless done by a duly qualified legal practitioner;
3. By doing something which, in order that the public may be adequately protected, is required to be done only by those who have the necessary training and expertise in the law.” (emphasis added, footnotes omitted).

- [13] The applicant thus submitted that by including the word “lawyer” next to his purported witnessing qualification, the respondent was doing something (although that thing is not required to be done exclusively by a solicitor) in such a way as to justify the reasonable inference that the person doing it was a solicitor. Moreover, the respondent had, by witnessing the Form 29 as a “lawyer”, plainly represented that he was entitled to engage in legal practice when he was not an Australian legal practitioner. In my view those submissions are correct and should be accepted.
- [14] The respondent raised nothing of substance in his submissions against the declaratory relief sought by the applicant. The arguments relied upon both for an adjournment and on the merits of the applicant were frivolous and entirely lacking in merit, save for an issue was raised regarding late service of material. However, since the matter was adjourned from 9 October 2012 to 12 October 2012 by reason of the respondent’s apparent ill-health, that issue ceased to be of any concern.
- [15] One of the matters advanced by the respondent for an adjournment of the application was that this court has no authority to stand in judgment of its own documents. In his written submissions, the respondent alleged that the copies of the originating application and the affidavit filed 28 September 2012 on 28 September 2012 were “fake”. In oral submissions, the respondent referred to the documents as being “clothed in the pretence of authority”. It seems the respondent, *inter alia*, takes issue with a “confusion” present in these documents between: a corporatised State of Queensland and a federated State of Queensland; a corporatised Queensland Treasury and the Department of Treasury; and “the *de jure* Supreme Court of Queensland and a corporatized (sic) Supreme Court of Queensland (ABN 066 102n930 – a legal fiction)”. He claimed that the “pretence of authority – the deception evidenced on the face of the documents” resulted in a breach of s 137.2 and s 139.1 of the *Criminal Code Act 1995* (Cth). The respondent indicated that he had invited the applicant to inspect the documents for the purpose of confirming that the documents were fake. When the applicant failed to do so, the respondent claimed he referred the matter to the appropriate authorities, apparently with the intention that the matter should be progressed to the Australian Federal Police and the Commonwealth and State Ombudsmen. The argument is disingenuous and vexatious.

- [16] The respondent also raised an issue regarding the Registrar's integrity and therefore his authority to administer the Freehold Land Register. This argument is also without merit and in any event irrelevant to the question whether the respondent acted in contravention of s 25 of the LPA by signing the Form 29 next to the word "lawyer".
- [17] In relation to the substance of this application, the respondent admits that he signed the document in the manner described. He submits that he is entitled to do so, being admitted to the legal profession. The respondent says he *may* engage in legal practice upon successfully applying for a Practising Certificate, and therefore meets the definition of an "Australian practising lawyer". For the reasons already given, the respondent's argument is rejected.
- [18] I am satisfied that the respondent engaged in conduct that would constitute an offence against s 25 of the LPA, which is a "relevant law" for the purposes of s 703(1)(a). In that regard, it is to be noted, as the applicant submitted, that a "relevant law" is defined in Schedule 2 of the LPA as including "this Act". The declaration sought by the applicant should be made.

### **Should injunctive relief be granted?**

- [19] I note that s 703(6)(a) provides that the court may grant an injunction, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of the relevant kind. The applicant submitted that in the absence of the injunctive orders sought, the respondent is likely to continue to engage in conduct in breach of the LPA.
- [20] The respondent submitted that he has since the conduct in issue voluntarily abstained from witnessing as a solicitor or lawyer. The respondent also stated that he explained that he could not give legal advice whenever he was requested to do so. I note, however, that on 21 February 2012 the applicant wrote to the respondent seeking an undertaking that he desist in engaging in legal practice. The respondent did not provide an undertaking to the applicant. Given the respondent's assertion to Mr Bowman on 14 November 2011 that he is a lawyer and is entitled to witness documents in this way, and the submissions made by the respondent before this court, there is a well placed concern that the respondent is likely to continue to engage in conduct of this kind in breach of s 25 of the LPA.
- [21] I am satisfied the requirements of s 703(1) are met. The respondent is a person who has engaged in conduct that would constitute an offence against a relevant law. As such, the court may grant an injunction on terms the court considers appropriate, restraining the respondent from engaging in that conduct and it is appropriate that it does so.

### **Orders**

- [22] The orders sought in the application should be granted.
- [23] It is declared that the respondent is and was at all material times, a person who did "represent that he was entitled to engage in legal practice" whilst he was not an Australian legal practitioner, as referred to in s 25(1) of the LPA.

[24] The respondent is restrained from representing that he is entitled to engage in legal practice when he is not an Australian legal practitioner, in contravention of s 25(1) of the LPA, and in particular is restrained from:

- (a) Describing himself as a “lawyer”, “solicitor” or “legal practitioner” when witnessing documents.

[25] I shall hear submissions as to any further orders.