

CITATION: *Legal Services Commissioner v Laurie*
[2011] QCAT 335

PARTIES: Legal Services Commissioner
(Applicant)
v
Bruce Angus Laurie
(Respondent)

APPLICATION NUMBER: LPD009-09

MATTER TYPE: Occupational Regulation Matters

HEARING DATE: On the papers, 23 February 2011;
further material received from the
respondent on 8 June 2011

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
assisted by:
Ms Karen Carmody
(Practitioner Panel Member)
Ms Kathleen Keating
(Lay Panel Member)

DELIVERED ON: 14 July 2011

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. That the respondent be publicly reprimanded.**
- 2. That the respondent pay the applicant's costs of and incidental to the application.**

CATCHWORDS: PROFESSIONS AND TRADES –
LAWYERS – COMPLAINTS AND
DISCIPLINE – DISCIPLINARY
PROCEEDINGS – PROFESSIONAL
MISCONDUCT OR UNSATISFACTORY
PROFESSIONAL CONDUCT – where the
respondent failed to lodge income tax
returns and Business Activity Statements
between 1997 and 2005 – where the
respondent failed to advise the Bar
Association of Queensland of his convictions
for offences related to that failure – where

the parties agree that the first charge constitutes professional misconduct – where the parties disagree about the proper characterisation of the second charge – where both parties agreed that the appropriate penalty would be public reprimand and payment of the Commissioner’s costs – whether the respondent’s failure to notify the Bar Association of Queensland of his conviction constituted professional misconduct or unsatisfactory professional conduct – appropriate penalty

Legal Profession Act 2004, ss 63, 245
Taxation and Administration Act 1953

Legal Services Commissioner v Donnelly
[2010] QCAT 569, cited
Legal Services Commissioner v Hewlett
[2008] LPT 3, 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* (QCAT Act).

REASONS FOR DECISION

- [1] These proceedings concern the failure of Mr Laurie, a barrister, to lodge income tax returns and Business Activity Statements between 1997 and 2005; and, his failure to advise the Bar Association of Queensland of his conviction for offences related to these failures in the Brisbane Magistrates’ Court on 10 August 2006.¹
- [2] Before the matter came for determination by this Tribunal the parties and their legal representatives had made separate submissions signifying agreement that the first charge should be categorised as what the legislation calls *professional misconduct*. They disagreed, however, about the proper categorisation of the second charge which, the Commissioner argued, constituted professional misconduct; the respondent contended that it should, rather, be categorised less seriously, as *unsatisfactory professional conduct*. In any event the parties agreed that, whatever the categorisation an appropriate penalty or sanction for the respondent would involve a public reprimand in respect of each charge, and his payment of the Commissioner’s costs.

¹ A conviction for a taxation offence is a ‘show cause event’ for the purposes of s 63 of the *Legal Profession Act 2004*.

- [3] That submission was advanced, however, on the basis that Mr Laurie had either paid all his outstanding tax or had entered into a plan, with the Australian Taxation Office, for repayment. Because information about those matters was, in the view of Panel members, unsatisfactory the Tribunal subsequently sought further information from Mr Laurie and he provided a statutory declaration dated 22 May 2011 which showed that, while tax is still owed, he has taken appropriate steps by way of a plan for full payment.
- [4] The circumstances surrounding the failure to lodge returns or BAS documents involved repeated failures, by Mr Laurie, to comply with his civic responsibilities over an extended period of time. These failures occurred despite regular reminders and, indeed, offers of assistance from the Australian Taxation Office which were met by unimpressive excuses or explanations from Mr Laurie: for example, that he could not lodge returns because he had not been provided with 'tax packs'.
- [5] That said there is evidence that, beginning in 1997, Mr Laurie sought and required assistance from a psychiatrist for a number of stressors in his life including serious matrimonial tensions, problems with wayward children, an acrimonious divorce, and depression. In 2005 his treating psychiatrist diagnosed him as having been '*... chronically dysthymic with ongoing low mood and difficulty motivating himself to work*'.
- [6] The *Legal Profession Act 2004*² applies because of the time of Mr Laurie's conviction in August 2006. On that occasion he was convicted, on pleas of guilty, of 20 offences under the *Taxation and Administration Act 1953* – eight counts of failing to furnish income tax returns, and twelve of failing to lodge Business Activity Statements. He was fined \$17,500 and ordered to pay \$295 costs of court. All of the outstanding returns had, in fact, been lodged just before his court appearance.
- [7] The conduct relating to the first charge is properly categorised as *professional misconduct* under the 2004 Act, which defined the term (in s 245) to include conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence, and, if happening otherwise than in connection with the practice of law, as conduct that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice. Mr Laurie's prolonged and continuing failure to lodge these tax documents meets that description.

²Subsequently replaced by the *Legal Profession Act 2007*.

- [8] As to the second charge – failing to notify the Queensland Bar Association of his conviction – he contends that it should be categorised as the lesser offence of *unsatisfactory professional conduct*.³ Reliance is placed, in submissions made for him, upon the decision of this Tribunal in *Legal Services Commissioner v Donnelly* [2010] QCAT 569 but that was a case in which the practitioner, although failing to advise the Association upon conviction, did make voluntary disclosure when applying for the annual renewal of his practicing certificate; thereafter, did not practise for a period of almost three years; and, was guilty of tax offences on a much smaller scale than here.
- [9] In *Donnelly* the Tribunal observed that the practitioner’s conduct ‘... probably rests on the cusp’ between professional misconduct, and unsatisfactory professional conduct. Here, both the magnitude of the offences and the circumstances surrounding Mr Laurie’s failure to notify the Association of his conviction warrant categorising the conduct at the more serious level, that is as *professional misconduct*.
- [10] It is to be observed that findings of professional misconduct do not automatically attract or warrant the most serious of sanctions, such as striking the practitioner off. As the Chief Justice observed in *Legal Services Commissioner v Hewlett* [2008] LPT 3, the finding does not necessarily indicate unfitness to practise at the present time. The observation applies here: Mr Laurie has apparently been of good behaviour since his conviction in 2006 and maintains a successful practice. The circumstances warrant the conclusion that he is presently fit for practice, notwithstanding his guilt of professional misconduct.
- [11] As to penalty, it has regularly been observed that this jurisdiction is primarily concerned with the protection of the public and the practitioner’s current fitness to practise rather than actual punishment. The Commissioner accepts that there are subjective features operating in Mr Laurie’s favour: the personal circumstances which were affecting him, and the steps he has taken to pay the tax and to make plans to discharge his tax debt in full.
- [12] The Tribunal also accepts that the offending did not involve dishonesty; and that he has striven, in the face of challenging personal circumstances and on-going problems associated with the property settlement proceedings arising from his failed marriage, to pay the debt and maintain his practice.
- [13] In light of the large fine imposed in the Magistrates’ Court (which Mr Laurie has paid) the Tribunal does not consider that the imposition of a further fine is warranted. A recent psychiatric report⁴ shows that Mr Laurie is dealing with (and to a large extent has overcome) the ramifications of the difficulties he was facing in his personal life. He has not been subject to any further disciplinary action.

³ Defined, in the *Legal Profession Act 2004*, to include conduct that falls short of the standard of competence and diligence that the public is entitled to expect of a reasonably competent practitioner.

⁴ 1 November 2010.

- [14] The circumstances also show that while he has been guilty of a failure to observe important civic responsibilities, his subsequent conduct confirms that he has not abandoned his obligations. In those circumstances any more serious penalty – for example, striking off – that would deny him his professional livelihood would be inappropriate, and excessive.
- [15] Nor, in the absence of any indication of any continuance of this previous offending, is there any basis for concluding that he presently requires supervision to ensure compliance with his civic responsibilities. Nor, in light of the large fine he has already paid for his tax convictions, does the Tribunal consider that the imposition of any additional financial penalty is warranted.
- [16] For these reasons, the Tribunal accepts that the sanction proposed by the Commissioner – a public reprimand on both counts – constitutes an appropriate penalty. An order to that effect will serve the subsidiary purpose of standing as a deterrent to other practitioners who may engage in professional misconduct of this kind. The respondent has also agreed to pay the Commissioner's costs, and that will be ordered.