

QCAT

Queensland Civil and Administrative Tribunal

DECISION

Case number: OCR076-18
Applicant: Legal Services Commissioner
Respondent: Travis Keith Sturgeon

Before: Justice Daubney, President

Assisted by:

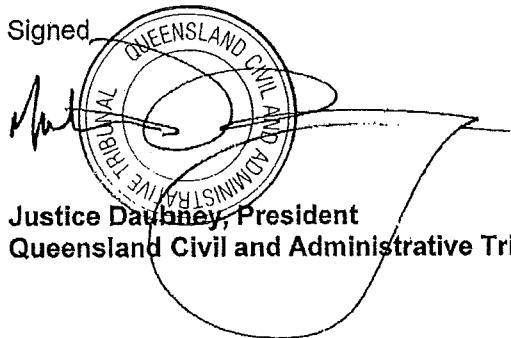
Ms Megan Mahon
Mr Keith Revell

Date: 16 September 2019
Proceeding Type: Tribunal Hearing

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. It is recommended that the name of the respondent, Travis Keith Sturgeon, be removed from the roll of legal practitioners in the State of Queensland.
2. The Respondent shall pay the applicant's costs of and incidental to the discipline application, to be assessed on the standard basis as if this were a proceeding in the Supreme Court of Queensland.

Signed



Justice Daubney, President
Queensland Civil and Administrative Tribunal

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QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Sturgeon* [2019] QCAT
286

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

v

TRAVIS KEITH STURGEON
(respondent)

APPLICATION NO/S: OCR076-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 16 September 2019

HEARING DATE: 16 September 2019

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

ORDERS: **1. It is recommended that the name of the respondent, Travis Keith Sturgeon, be removed from the roll of legal practitioners in the State of Queensland.**

2. The respondent shall pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the respondent acted for the executor of a will in circumstances where he was in an intimate personal relationship with a beneficiary of the will – where the respondent copied and pasted the signature of the executor onto various authorities and a proposed estate distribution schedule – where in one instance the respondent purported to witness the signature of the executor which he himself had falsified – where the respondent provided the falsified authorities to third parties to expedite the release of estate funds to the beneficiaries – where on two occasions the respondent made statements to third parties to expedite release of the estate funds that one of the beneficiaries was terminally ill and required the release of the estate funds to begin treatment in circumstances where the respondent

knew that to be untrue – where the respondent deleted electronic material held by the legal practice at which he was employed and knowingly made false statements as to the client’s whereabouts to a principal of the legal practice in order to impede the legal practice’s ability to make a proper and timely inquiry into the respondent’s administration of the estate – where the respondent is charged with ten charges of dishonest and disreputable conduct and two charges of being compromised in his integrity and professional independence – whether the charges are made out to the requisite standard – whether the conduct of the respondent should be characterised as professional misconduct under s 419 of the *Legal Profession Act 2007* – whether to recommend that the name of the respondent be removed from the roll of legal practitioners in Queensland

Australian Solicitors’ Conduct Rules 2012, r 4, r 5
Legal Profession Act 2007, s 419, s 420(1)(a), s 462

Briginshaw v Briginshaw (1938) 60 CLR 336
Legal Services Commissioner v Meehan [2019] QCAT 17

APPEARANCES & REPRESENTATION:

Applicant: M Nicolson instructed by Legal Services Commissioner
 Respondent: No appearance

REASONS FOR DECISION

- [1] By this discipline application brought under the *Legal Profession Act 2007* (“LPA”) the applicant Legal Services Commissioner (“LSC”) has brought against the respondent, Travis Keith Sturgeon, a total of 12 charges, being 10 charges of dishonest and disreputable conduct and two charges of being compromised in his integrity and professional independence.
- [2] There is no appearance today by the respondent. The respondent had previously been legally represented in this discipline application. His solicitors, Gilshenan & Luton, were given leave to withdraw as legal representatives for the respondent by order of this Tribunal made on 3 June 2019. That leave was granted consequent upon receipt of a letter from Gilshenan & Luton dated 15 April 2019 in which it was stated that the purpose of the correspondence was to:
1. Request, in accordance with Mr Sturgeon’s instructions, leave for Gilshenan & Luton legal practice to withdraw from acting on his behalf; and
 2. Inform the Tribunal, as a courtesy on Mr Sturgeon’s behalf, that he does not intend to take any further steps in defending the disciplinary application commenced by the LSC.

- [3] The letter went on to advise that the respondent was living in Adelaide and was currently employed as in-house counsel, but intended to change his employment in the near future. The letter advised that the respondent did not wish to practise as a solicitor in the future. It asserted that his response to the current proceeding would necessitate significant expenditure by him and that he would need to undertake significant training and preparation because he has never appeared in discipline matters such as this. The letter said that given the respondent's future employment intentions, he did not wish to incur the expense and required preparation in order to actively defend the proceedings.
- [4] As already noted, consequent upon the receipt of that correspondence, Gilshenan & Luton were given leave to withdraw as solicitors on the record.
- [5] The respondent was given notice of today's hearing. In fact, he responded to the QCAT registry upon receipt of that notice to clarify his address details. It is clear that the respondent is on notice of today's hearing and has chosen not to appear. In those circumstances the Tribunal proposes now to proceed to determine the discipline application.
- [6] The onus rests on the applicant Legal Services Commissioner to prove the allegations in the discipline application to the requisite standard; that is, on the balance of probabilities, but with an application of the *Briginshaw*¹ test.
- [7] The affidavit material relied on by the Commissioner consists of an affidavit by Ms Thea Johnson, the relevant LSC investigator, to which is exhibited all of the relevant documentation. That includes a very lengthy "response" which was written on behalf of the respondent by his former legal representatives, McInnes Wilson, in which, apparently on instructions, some detail of the respondent's response to the various allegations now contained in the discipline application were made.
- [8] Despite having descended into that sort of detail in that solicitor's letter, however, the respondent has not put on any affidavit material for the purposes of the present discipline application. In other words, the only evidence before the Tribunal is that which has been proffered by the applicant Legal Services Commissioner. There is simply no evidence filed in the proceeding by or on behalf of the respondent.
- [9] In addition to the affidavit by the investigator, which, as I have already said, exhibits the relevant documentation, there are two important affidavits that have been filed. As will shortly appear, there are a number of central allegations in the discipline application. One is that on numerous occasions the respondent effectively forged the signature of Ms Heather Downs by cutting and pasting an electronic signature and inserting that on to particular documents. The Tribunal has before it an affidavit sworn by Ms Downs in which she expressly confirms that at no time did she give the respondent any oral or written consent to use her signature on any documents concerning her role as an executor in the estate of Maxwell Alan Downs.
- [10] The other affidavit is by Timothy Gerard McGrath, who is a principal of the firm at which the respondent was employed as a solicitor at the time of the incidents in question. Amongst other things, Mr McGrath confirms that the respondent was not authorised to undertake the work which led to the defalcations asserted in the

¹ (1938) 60 CLR 336.

discipline application. He also confirmed the fact of deletion by the respondent of certain electronic records held by the firm and the remedial steps which needed to be taken by the firm in response to that action by the respondent.

- [11] The respondent was admitted to practice in Queensland on 6 April 1998. He does not presently hold a practising certificate in Queensland, but until recently, at least, held one in South Australia. He was an Australian legal practitioner as defined in the LPA. He otherwise has no disciplinary history.
- [12] During the relevant period the respondent was employed as a solicitor in the Cairns firm, Miller Harris, in the field of workplace relations. The charges in this discipline application relate to his conduct between 18 December 2015 and 7 January 2016, while he was a solicitor at that firm.
- [13] He undertook to act as the solicitor for Heather Jean Downs, who had been named as an executor of the estate of Maxwell Alan Downs, deceased. The estate was valued at more than \$660,000. The late Maxwell Downs was the father of the respondent's domestic partner, Ms Wendy Brazil. Wendy Brazil and her brother were beneficiaries of the will.
- [14] Five of the charges, namely, charges 1, 2, 5, 7 and 8, relate to the respondent forging the signature of his client, Heather Downs, on documents, in order to obtain the release of funds from the estate to go to beneficiaries.
- [15] Charge 8 involved forging Ms Downs' signature on a document entitled Proposed Estate Distribution Schedule dated 6 January 2016 and also creating a forged email from Heather Downs to himself, purporting to attach that schedule on which he had forged her signature. The apparent purpose of that forgery was to have cheques drawn from the firm's trust account for payment to the beneficiaries of the estate.
- [16] Charge 3 in the discipline application relates to the respondent witnessing or purporting to witness the signature of Heather Jean Downs, that he, himself, had forged, that is the forgery which is the subject of charge 2.
- [17] Charges 4 and 6 relate to the respondent making statements in correspondence that he knew to be false about a claim that one of the beneficiaries of the will was suffering a terminal illness, in order to gain the expedited release of funds.
- [18] Charge 9 relates to the respondent deleting copies of material on the file from the electronic files of the firm to try to defeat the ability of the firm to conduct a proper inquiry into his administration of the estate.
- [19] Charges 10 and 11 relate to the respondent making knowingly false statements to Mr McGrath about where Ms Downes was in order to impede Mr McGrath from making a proper and timely inquiry into the respondent's administration of the estate of the late Mr Downs.
- [20] Charge 12 relates to the conduct of the respondent while acting for Ms Downs, taking deliberate steps to expedite the distribution of funds from the estate of Mr Downs when he was in a personal, intimate relationship with one of the beneficiaries, namely, Ms Brazil. On 12 December 2015, the respondent had signed a contract for the purchase of a house in South Australia. On 7 January 2016, the respondent and Ms Brazil had jointly obtained a \$600,000 loan to fund that purchase.

- [21] Descending into some further detail in relation to the underlying facts which are disclosed in the material in evidence before the Tribunal, it is apparent that in order to facilitate the administration of the estate, the respondent forged the signature of Heather Jean Downs on several documents. I observe in passing that in the correspondence previously sent to investigators and the LSC on behalf of the respondent, some issue had been raised as to whether the conduct of the respondent in cutting and pasting an electronic signature technically amounted to forgery. It is unnecessary to descend into a jurisprudential debate as to the elements of the criminal offence of forgery. It is quite clear on the material before this Tribunal that the respondent falsely and deliberately utilised an electronic version of Ms Downs' signature on documents without her authorisation to do so.
- [22] Insofar as it was suggested on his behalf that he did so in the belief that Ms Downs wanted or would have wanted him to use her signature in that way, it is to be noted that this is directly contrary to the evidence before this Tribunal from Heather Downs.
- [23] It also simply cannot be accepted that a solicitor can cut and paste a signature in that manner and utilise it as purporting to be the authentic signature of the client. Whether or not the conduct amounts to the technical offence of forgery is neither here nor there, it was unacceptable and dishonest conduct.
- [24] In any event, the documents to which the respondent affixed Ms Downs' signature in that way comprised:
- (a) an authority directed to the Commonwealth Bank dated 18 December 2015;
 - (b) an authority directed to Aegis Healthcare dated 18 December 2015;
 - (c) a deed poll authority to release funds held to the beneficiaries directed to Aegis Aged Care Group dated 22 December 2015;
 - (d) a Legal Profession Act 2007 authority instructing payment from the firm's trust account, dated 22 December 2015; and
 - (e) a proposed estate distribution schedule dated 6 January 2016.
- [25] Moreover, as already noted in passing, the respondent compounded the dishonesty of his conduct by purporting to witness the forged signature of Heather Downs on the deed poll authority dated 22 December 2015.
- [26] In the course of acting in this estate, the respondent also made several significantly misleading statements to third parties, which he must have known to be untrue. He wrote to the Commonwealth Bank Estate Settlement and Support group team, by email, on 5 January 2016, to request a funds transfer as a matter of priority and advised in that email that one of the beneficiaries under the will "has a terminal illness, and is urgently awaiting release of the estate funds to pay for treatment".
- [27] He also wrote to the Aegis Aged Care Health Group by email on 22 December 2015, to request the release of an aged care accommodation bond as a matter of priority because one of the beneficiaries under the will of the deceased "has a terminal illness, and is awaiting receipt of these moneys to start treatment".

- [28] The person of whom the respondent was speaking in those emails, namely Peter Downs, was not terminally ill. Peter Downs had apparently suffered from some significant health issues over a period of time, but as the respondent must have known, the state of health of Mr Peter Downs was not such at the time as to warrant the description as “terminal”. The only rational inference to be drawn from the use of that sort of language by the respondent in this correspondence to parties from whom the respondent was urging urgent payment was to seek to expedite those parties in their disgorgement of funds. It is relevant, of course, that one of the parties to whom those funds were to be paid – urgently, as requested by the respondent in this correspondence – was his de facto partner, Ms Brazil, with whom he had entered into a contract to purchase a property in South Australia, and for which, obviously enough, the receipt of those funds would have been a significant advantage.
- [29] The respondent also attempted to use the LPA authority, and the proposed estate distribution schedule, to which he had wrongfully affixed the signature of Heather Downs, for the purposes of instructing his secretary at the law firm to draw trust account cheques payable to Heather Jean Downs, Peter Downs, and his de facto partner, Wendy Brazil.
- [30] It is also clear from the evidence before this Tribunal, and in previous correspondence from the respondent’s legal advisors it was conceded, that the respondent had gone in and deleted material on the firm’s electronic file relating to the matter.
- [31] It is also clear, on the material before this Tribunal, that when confronted about his conduct of the file by Mr McGrath on 7 January 2016, the respondent lied about a number of matters, including the whereabouts of Heather Downs and her availability to attend the office. Mr McGrath had expressed concern about the validity of the authorities signed by Ms Downs, and had requested that Ms Downs attend to sign a fresh document. The respondent lied to Mr McGrath about Ms Downs’ whereabouts, so as to avoid the prospect of her attending at the firm, for the purposes of signing a fresh document. He told Mr McGrath further lies about Ms Downs’ location and travel arrangements, again, to avoid the prospect of Ms Downs attending at the firm.
- [32] In relation to the individual charges levelled in the discipline application, it is sufficient for the Tribunal, then, to make the following findings on the basis of the evidence which is before this Tribunal:
- (a) Charge 1: the Tribunal finds that, on a date unknown between 18 December 2015 and 22 December 2015, the respondent forged the signature of Heather Downs on an authority dated 18 December 2015, directed to the Aegis Aged Care Group, and on 22 December 2015, sent that document to the Aegis Aged Care Group.
 - (b) Charge 2: on a date unknown between 18 December 2015 and 22 December 2015, the respondent forged the signature of Heather Jean Downs on a deed poll authority to release funds held to beneficiaries dated 22 December 2015, directed to the Aegis Aged Care Group, and on 22 December 2015, sent that document to Aegis Aged Care Group.
 - (c) Charge 3: on a date unknown, between 18 December 2015 and 22 December 2015, the respondent signed his name as witness to the forged signature of Heather Jean Downs on the said deed poll authority to release funds.

- (d) Charge 4: on 22 December 2015, the respondent corresponded by email with Aegis Aged Care Group and requested payment of an accommodation bond directed to the beneficiaries as a matter of priority because one of the beneficiaries “has a terminal illness and is awaiting receipt of these moneys to start treatment”, when that statement was known by the respondent to be untrue.
- (e) Charge 5: on a date unknown, between 18 December 2015 and 23 December 2015, the respondent forged the signature of Heather Jean Downs on an authority dated 18 December 2015, directed to the Commonwealth Bank of Australia Estate Settlement and Support team and on 23 December 2015 sent that document to the Commonwealth Bank of Australia.
- (f) Charge 6: on about 5 January 2016 the respondent corresponded by email with the Commonwealth Bank of Australia and requested payment of moneys as a matter of priority because “one of the beneficiaries under the will of the late Maxwell Downs has a terminal illness and is urgently awaiting release of estate funds to pay for treatment”, when this statement was known by the respondent to be untrue.
- (g) Charge 7: on a date unknown between 22 December 2015 and 6 January 2016, the respondent forged the signature of Heather Jean Downs on a *Legal Profession Act 2007* authority, dated 22 December 2015 directed to Miller Harris Lawyers, in an attempt to have cheques drawn from the firm’s trust account for payments to the executor and beneficiaries of the estate.
- (h) Charge 8: on or about 6 January 2016 the respondent forged the signature of Heather Jean Downs on a document entitled Proposed Estate Distribution Schedule dated 6 January 2016 directed to Miller Harris Lawyers in attempt to have cheques drawn from the firm’s trust account for payment to the beneficiaries of the estate.
- (i) Charge 9: on 7 January 2016 the respondent, during the course of the administration of the said estate, deleted copies of his correspondence with Aegis Aged Care Group from the firm’s file.
- (j) Charge 10: on 7 January 2016 the respondent, in a conversation with Tim McGrath, a principal of Miller Harris Lawyers, stated that Heather Downs was his house guest and had been able to attend the office of Miller Harris Lawyers for the purpose of signing an authority, in circumstances where he knew that statement was false.
- (k) Charge 11: on 7 January 2016 the respondent had a conversation with Mr McGrath, in which he said that Heather Downs was not able to attend the office of Miller Harris Lawyers because she had returned to Perth the night before, in circumstances where he knew that statement was false.
- (l) Charge 12: between 18 December 2015 and 7 January 2016 the respondent, who was acting for Heather Downs, the executor of the deceased estate of Maxwell Alan Downs, took deliberate action to expedite the distribution of estate funds to the beneficiaries of the estate, at a time when the respondent was in a personal relationship with one of the beneficiaries of the estate, namely, Wendy Brazil.

[33] Rule 4 of the *Australian Solicitors' Conduct Rules* relevantly provides that a solicitor must:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
- 4.1.4 avoid any compromise to their integrity and professional independence; and
- 4.1.5 comply with these Rules and the law.

[34] Rule 5 of the *Australian Solicitors' Conduct Rules* provides:

- 5.1 A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to:
 - 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or
 - 5.1.2 bring the profession into disrepute.

[35] A breach of the *Australian Solicitors' Conduct Rules* is conduct which is capable of constituting unsatisfactory professional conduct or professional misconduct – see s 420(1)(a) of the LPA and the extended application of that section by virtue of the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992*.

[36] Having outlined at some length the particulars of the respondent's conduct, albeit over a relatively short period of time, it is quite clear that the respondent failed to meet the standards required of solicitors who are bound by the *Australian Solicitors' Conduct Rules*. The Tribunal has noted a number of instances in the conduct described above which were patently dishonest. In particular, reference should be had to the respondent's conduct in cutting and pasting Ms Downs' signature for the purposes of falsely affixing it to important documents and then seeking to pass those documents off as bearing her original signature. In one case, that was compounded by his purported witnessing of her signature.

[37] His dishonesty was also evident in his deletion of records in the firm's electronic file and in the lies that he told Mr McGrath when it is clear that things were starting to unravel in terms of the respondent attempting to expedite the administration of the estate. As already noted, that expedition of the administration of the estate was clearly motivated by the object of securing an early pecuniary advantage for Ms Brazil, by having the bequests under the estate paid out to her with great haste, and in circumstances where Ms Brazil and the respondent had a personal financial imperative to receive that money as quickly as possible for the purposes of settling their acquisition of a property in South Australia.

[38] The Tribunal finds that each of the charges in the discipline application is made out to the requisite standard. The Tribunal also finds that by the conduct in each of the

charges the respondent breached the *Australian Solicitors' Conduct Rules*. In particular, it is clear that the respondent in numerous instances, acted dishonestly and disreputably. It is also clear that the way in which he conducted himself was apt to compromise his integrity and professional independence. These were serious defalcations by the respondent. It was not a case of a passing lapse of judgment, rather, when seen as a whole, the respondent's conduct in this matter was characterised by a course of action in which he was prepared to do whatever needed to be done, whether honest or dishonest, in order to finalise the administration of the estate as quickly as possible in circumstances where he and his de facto partner were standing to make a personal benefit.

- [39] This Tribunal has repeatedly emphasised that honesty and integrity are unarguably the core personal characteristics which attach to membership of the legal profession. It is sufficient in that regard, to refer to the observations by this Tribunal recently in *Legal Services Commissioner v Meehan*.²
- [40] The nature and extent of the dishonest conduct and disreputable conduct by the respondent in the present case clearly warrants, in the view of this Tribunal, findings that the respondent engaged in professional misconduct, within the meaning of that term in s 419 of the LPA.
- [41] There will therefore be findings that on each charge in the discipline application, the respondent committed professional misconduct.
- [42] Having characterised the respondent's conduct as professional misconduct, the discretion of the Tribunal to make orders under s 476 of the LPA is enlivened. That is a very broad discretion and one which is approached on the proposition that the purpose of disciplinary proceedings is not punitive of the respondent, but protective of the public. That being said, it is clearly in the public interest for the public to be protected against practitioners who have demonstrated a propensity for dishonest conduct.
- [43] There is ample authority for the proposition that dishonesty of this nature is, of itself, sufficient to indicate that a person lacks fitness for ongoing membership of the profession. It must be recalled, however, that whilst the time for characterising the conduct is at the time of the commission of the conduct, the time for ascertaining the appropriate order to be made is at the time of the hearing. That being said, it is notable that the respondent has not only not put on any material to seek to mitigate his position, he has actively disengaged from involvement in the disciplinary proceeding before this Tribunal.
- [44] The applicant has submitted that it is appropriate in the circumstances of the present case for the Tribunal to recommend that the respondent's name be removed from the roll of practitioners in this State. Counsel for the applicant has properly reminded the Tribunal that the test to be applied when considering whether a person ought be struck off is whether the Tribunal is satisfied that the solicitor is probably permanently unfit to practise. In ascertaining whether or not that test has been reached, it is appropriate, of course, to have regard to the nature of the conduct committed by the respondent.

² [2019] QCAT 17.

In this case, that is marked by dishonesty, which as the Tribunal has already observed, is something which is fundamental to the practise of law.

- [45] The respondent has not put before the Tribunal any material from which the Tribunal can properly infer that his state of fitness to practise now is any better than it was when he committed the offending conduct. That, of course is a matter to which it was for the respondent to direct himself and as the Tribunal has already noted several times, he has chosen to completely disengage from this disciplinary process.
- [46] In all the circumstances, the Tribunal is satisfied that, having regard to the fact that this conduct occurred in the practise of law and involved both dishonesty and preferral of personal interests, and in the absence of any mitigating material from the respondent, it is appropriate to find that the probability is that the respondent is permanently unfit to practise. That being the case, the appropriate order to be made by the Tribunal is that it be recommended that the respondent's name be removed from the roll of practitioners in this State.
- [47] By section 462 of the LPA, a disciplinary body which makes a finding of professional misconduct must order costs against the practitioner unless satisfied that exceptional circumstances exist. The respondent has not sought to demonstrate any such exceptional circumstances and accordingly, it follows that there will be a costs order against the respondent.
- [48] The orders of the Tribunal, therefore, are as follows:
1. It is recommended that the name of the respondent, Travis Keith Sturgeon, be removed from the roll of legal practitioners in the State of Queensland.
 2. The respondent shall pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.