

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

LEGAL PRACTICE LIST

VCAT REFERENCE NO. J110/2015

CATCHWORDS

Legal practitioner, creation of false bills to clients, transfer of trust monies not in accordance with clients' directions, trust deficiencies, failure to make out trust receipts, failure to comply with request for itemised account, failure to comply with applicant's request for documents.

APPLICANT	Victorian Legal Services Commissioner
RESPONDENT	Mr Robert Hession
WHERE HELD	Melbourne
BEFORE	Gerard Butcher, Senior Member
HEARING TYPE	Hearing
DATES OF HEARING	29 November 2016
DATE OF ORDER	8 December 2016
CITATION	Victorian Legal Services Commissioner v Hession (Legal Practice) [2016] VCAT 2056

ORDER

- 1 The respondent is reprimanded in relation to each of the charges.
- 2 The respondent may not be granted a local practising certificate before the end of five years from the date of this order.
- 3 The Tribunal recommends to the Supreme Court of Victoria that the respondent's name be removed from the local roll of practitioners.
- 4 The respondent is to pay to the applicant his costs of this proceeding fixed by the Tribunal in the sum of \$18,714.27.



Gerard Butcher
Senior Member

APPEARANCES:

For Applicant

Ms R. Sharpe of Counsel

For Respondent

No appearance

REASONS

- 1 Following the Tribunal's findings of 22 September 2016¹, a hearing was scheduled for 29 November 2016 for the parties to make submissions as to disposition.
- 2 Submissions on behalf of the Commissioner were filed and served prior to the hearing in order that Mr Hession was made aware of the contents of the submissions. Mr Hession did not appear, nor was he represented at the hearing, nor did he file any submissions.
- 3 The Commissioner seeks the following orders:
 - a That Mr Hession be reprimanded in relation to each of the charges;
 - b That Mr Hession may not be granted a local practising certificate before the end of five years from the date of the order;
 - c That the Tribunal recommend to the Supreme Court of Victoria that Mr Hession's name be removed from the local roll of practitioners; and
 - d That Mr Hession pay the Commissioner's costs of the application fixed at \$18,714.27.
- 4 For the following reasons I consider that the orders sought by the Commissioner are appropriate.
- 5 Collectively, the conduct giving rise to the charges must be seen as being at the serious end of the spectrum of offending. It involved false invoicing, trust account deficiencies, failing to comply with obligations to the regulator and failing to provide various documents to the regulator.

MR HESSION'S DISCIPLINARY HISTORY

- 6 20 July 1999 – Matter VLR/98/659
Unsatisfactory conduct within the meaning of the *Legal Practice Act 1996* – failing to provide costs information and entering into a contingency fee arrangement. Outcome: reprimanded by consent.
- 7 1 August 2000 – *Victorian Lawyers RPA Limited v Hession* [2000] VLPT 12
Four counts of misconduct within the meaning of the *Legal Practice Act 1996* – commencing proceedings on behalf of clients without instructions and without advising of relevant matters; substantial failure to reach a reasonable standard of competence and diligence with respect to that litigation; and failure to make cost disclosure as required by section 86(1) and (3) of the *Legal Practice Act 1996*. Outcome: \$15,000 fine; costs of \$5,192.80.

¹ Victorian Legal Services Commissioner v Hession [2016] VCAT 1623.

- 8 30 August 2005 – Matter VLR/04/1051
Unsatisfactory conduct within the meaning of the *Legal Practice Act 1996* – failure to make cost disclosure. Outcome: caution by consent.
- 9 11 August 2010 – *Legal Services Commissioner v Hession* [2010] VCAT 1328 and [2010] VCAT 1687
Professional misconduct – taking of an executor’s commission without entitlement.
Unsatisfactory professional conduct – breach of fiduciary obligation with respect to advice or statements made about the claim for executor’s commission.
Outcome: \$30,000.00 fine and costs of \$38,161.90. The respondent also undertook to complete 10 additional CPD units on probate and administration law; refrain from acting as an executor until completing the additional CPD; and that the respondent would ensure his familiarity with practice rules relating to deceased estates.
- 10 30 June 2011 – LSC/09/537
Unsatisfactory professional conduct – failure to make cost disclosure.
Outcome: caution by consent; compensation paid.

MR HESSION’S PRESENT CIRCUMSTANCES



- 11 Mr Hession does not currently hold a practising certificate. On 24 February 2016, the Victorian Legal Services Board (the Board) refused Mr Hession’s application for a practising certificate on the basis that he was not a fit and proper person to be authorised to engage in legal practice. Mr Hession has not sought review of or appealed that decision.
- 12 Mr Hession is currently an undischarged bankrupt.
- 13 Since 15 February 2016, by order of the Supreme Court of Victoria, the Law Practice has been under the conduct of a receiver.
- 14 On 23 June 2016, on an application brought by the receiver, the Court ordered the *pari passu* distribution of the Law Practice’s trust account to clients on whose behalf money was held to account for an identified trust account deficiency of \$644,651.14. The Board is presently assessing claims against the Fidelity Fund totalling \$957,724.36 with respect to the Law Practice. The Commissioner does not seek to rely on the claims as they are yet to be resolved.

MITIGATION

- 15 As Mr Hession has taken no active part in this proceeding, the Tribunal is unable to conclude that there are any mitigating circumstances.

PRINCIPLES

- 16 The principles in relation to disposition are well known. See *Stirling v Legal Services Commissioner* (2013) VSCA 374. The most important considerations in this case are: Individual deterrence, general deterrence, protection of the public and protection of the reputation of the legal profession.
- 17 As Mr Hession does not presently practice, individual deterrence and protection of the public are served by a period of disqualification. General deterrence and protection of the reputation of the legal profession are of great significance in this case. The profession must know and be reminded that the trust account is sacrosanct and must be conducted scrupulously and honestly. Transgressions such as those committed by Mr Hession merit serious sanction both as general deterrence and as a sign to the public that the profession values and protects its standards.
- 18 It must be concluded that Mr Hession is presently not fit and proper to practise. It is a matter for the Supreme Court to determine whether he is permanently so.



Gerard Butcher
Senior Member

