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# ACT Legal Ethics Cases: 2023 Year in Review

**PRESENTED BY ATHOL OPAS**

BARRISTER, BLACKBURN CHAMBERS

# Blackburn Chambers

## What we'll cover today

- ***Council of the Law Society of the Australian Capital Territory v Legal Practitioner 202022 (name deleted) (Occupational Discipline) [2023] ACAT 6***
- ***Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023] ACAT 63***
- ***Council of the Law Society of the ACT v Legal Practitioner LP 202012 (Occupational Discipline) [2024] ACAT 11***

### *Legal Profession Act 2006 (ACT), sections 386 & 387*

***unsatisfactory professional conduct*** includes conduct of an Australian legal practitioner happening in connection with the practice of law that **falls short of the standard of competence and diligence** that a member of the public is entitled to expect of a **reasonably competent Australian legal practitioner**.

***professional misconduct*** includes—

- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a **substantial or consistent failure** to reach or maintain a **reasonable standard of competence and diligence**; and
- (b) conduct of an Australian legal practitioner whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is **not a fit and proper person to engage in legal practice**.

## Council's options for dealing with a complaint after investigation

### *Legal Profession Act 2006 (ACT), section 410(1)*

#### **410 Decision of council after investigation**

- (1) After finishing an investigation of a complaint against a person, the relevant council must—
  - (a) **dismiss the complaint** under section 412; or
  - (b) take action under section 413 (**Summary conclusion** of complaint procedure by fine etc); or
  - (c) make an **application to the ACAT** under part 4.7.

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## Issues to determine in event of professional misconduct (including unsatisfactory professional conduct)

1. Facts
2. Charges
3. Characterisation: unsatisfactory professional conduct vs professional misconduct
4. Sanctions

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## *Council of the Law Society of the Australian Capital Territory v Legal Practitioner 202022 (name deleted) Occupational Discipline [2023] ACAT 6 – slide #1*

- As a sole practitioner, the solicitor employed a ‘**disqualified person**’ as a ‘**lay associate**’ (administrative assistant) for around 6 weeks without Council approval – ***Legal Profession Act, section 589***.
- The ‘disqualified person’ was a former ACT solicitor, removed from the roll in 2015.
- On some occasions, the disqualified person exceeded his authority, signing emails as a paralegal.
- No allegation that employment of the disqualified person caused any loss to clients.
- Solicitor misled Law Society about when the disqualified person commenced employment – **Solicitors Conduct Rules, rule 43**.
- Joint submissions by Law Society and solicitor about facts, characterisation and proposed sanctions – copy annexed to ACAT written decision.

## *Council of the Law Society of the Australian Capital Territory v Legal Practitioner 202022 (name deleted) Occupational Discipline [2023] ACAT 6 – slide #2*

### *Legal Profession Act 2006 (ACT)*

#### **589 Associates who are disqualified or convicted people**

- (1) A law practice must not have a person as a lay associate if—
  - (a) a principal, or other legal practitioner associate, of the practice knows that the person—
    - (i) is a disqualified person; or
    - (ii) has been convicted of a serious offence; and
  - (b) the person is not approved by the relevant council under subsection (2).
- (2) The relevant council may, on application, approve a lay associate for this section.



## *Council of the Law Society of the Australian Capital Territory v Legal Practitioner 202022 (name deleted) Occupational Discipline [2023] ACAT 6 – slide #3*

### *Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 43 — Dealing with the regulatory authority

- 43.1 Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority.
- 43.2 A solicitor must respond within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow) to any requirement of the regulatory authority for comments or information in relation to the solicitor's conduct or professional behaviour in the course of the regulatory authority investigating conduct which may be unsatisfactory professional conduct or professional misconduct and in doing so the solicitor must furnish in writing a full and accurate account of his or her conduct in relation to the matter.

## *Council of the Law Society of the Australian Capital Territory v Legal Practitioner 202022 (name deleted) Occupational Discipline [2023] ACAT 6 – slide #4*

- Solicitor affidavit explained her financial, business, family and personal stress when the events occurred.
- History of other disciplinary action involving the Respondent solicitor – not a first offender and unable to expect a degree of leniency which another practitioner coming before the ACAT could expect.

### **Orders:**

- Employment of ‘disqualified person’ as ‘lay associate’ – **unsatisfactory professional conduct.**
- Recklessly misleading the Law Society – **professional misconduct.**
- Public reprimand.
- \$8,000 fine, payable via instalments.
- Solicitor to pay Law Society’s costs in agreed sum, via instalments.

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## *Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]* ACAT 63 – slide #1

Solicitor gave undertaking in sale of property subject to a family law dispute.

Solicitor made unauthorised payments from trust account (LPA, s 223(1)) in breach of undertaking (solicitors conduct rules, r 6.1).

Agreed submissions as to facts, charges, characterisation and sanctions.

## *Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]* ACAT 63 – slide #2

*Legal Profession Act 2006 (ACT)*

### **223 Holding, disbursing and accounting for trust money**

- (1) A law practice must—
  - (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and
  - (b) disburse the trust money only in accordance with a direction given by the person.

*Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]*  
**ACAT 63 – slide #3**

*Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 6 — Undertakings

- 6.1 A solicitor who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.

# Blackburn Chambers

## *Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]* ACAT 63 – slide #4

Finding: Professional misconduct.

Sanctions:

- Public reprimand.
- \$8,000 fine.
- Solicitor to undertake approved courses in ethics and trust accounting before applying for a practising certificate.
- Solicitor to pay the Law Society's costs (\$3,000) payable via equal monthly instalments over 12 months.

# Blackburn Chambers

## *Council of the Law Society of the ACT v Legal Practitioner LP 202012 (Occupational Discipline) [2024] ACAT 11 – slide #1*

- Solicitor acted in multiple court and tribunal migration proceedings.
- **rr 4.1.2 and 4.1.3** – Honesty and courtesy in all dealings in the course of legal practice; delivering legal services competently and diligently.
- **r 5** – Dishonest and disreputable conduct.
- **rr 19.1 and 19.2** and **common law** duty of honesty and candour to the Court.
- **rr 43.1 and 43.2** and **common law** duty to inform and assist the Law Society.
- **LPA s 222(1)** – Failing to deposit trust money received on account of legal costs into a trust account.
- **Common law** – Misappropriating trust moneys.

## *Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]* ACAT 63 – slide #2

*Legal Profession Act 2006 (ACT)*

### **222      Certain trust money to be deposited in general trust account**

- (1) As soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice kept in the ACT.



*Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]  
ACAT 63 – slide #3*

*Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 4 — Other fundamental ethical duties

- 4.1 A solicitor must also:
- 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.

*Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]*  
**ACAT 63 – slide #4**

*Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 5 — Dishonest and disreputable conduct

- 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.

*Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]  
ACAT 63 – slide #5*

*Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 19 — Frankness in Court

- 19.1 A solicitor must not deceive or knowingly or recklessly mislead the court.
- 19.2 A solicitor must take all necessary steps to correct any misleading statement made by the solicitor to a court as soon as possible after the solicitor becomes aware that the statement was misleading.

*Council of the Law Society of the ACT v LP082023 (Occupational Discipline) [2023]*  
**ACAT 63 – slide #6**

*Legal Profession (Solicitors) Conduct Rules 2015 (ACT)*

## Rule 43 — Dealing with the regulatory authority

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