

LEGAL PRACTICE COMMITTEE OF QUEENSLAND

OFFICE: Brisbane  
NUMBER: 006/08

Applicant: LEGAL SERVICES COMMISSIONER

AND

Respondent: ALAN GRAHAM TAYLOR

DISCIPLINE APPLICATION

A. DETAILS OF APPLICATION

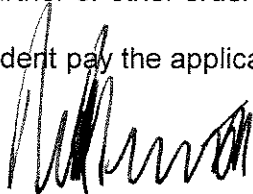
This application is made under section 452 of the *Legal Profession Act 2007* ("Act").

The applicant alleges that on the particulars of charge set out below, the respondent is guilty of unsatisfactory professional conduct.

Upon a finding that the respondent is guilty of unsatisfactory professional conduct the applicant seeks the following orders:

1. Disciplinary orders pursuant to section 458 of the Act.
2. Any such further or other orders or directions as may be just.
3. The respondent pay the applicant's costs of the application.


Signed:



Description: Legal Services Commissioner

Dated:

29 October 2008

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## B. PARTICULARS OF CHARGE


The Commissioner alleges that the following charge constitutes unsatisfactory professional conduct:

### Charge 1 – Lack of Competence and Diligence

1. The respondent failed to maintain reasonable standards of competence and/or diligence in relation to the preparation and execution of a Will and an Enduring Power of Attorney signed by Mrs. Mary Elizabeth Maud Musgrave ("**client**") on 21 January 2005.

#### Particulars

- 1.1 At all material times, the respondent:
  - (a) was the sole principal of the law practice of North Coast Law;
  - (b) acted on behalf of the client.
- 1.2 On or about 26 August 2004 the client was assessed by the Nambour Aged Care Assessment Team as requiring low level, dementia specific care. The client had an identified diagnosis of dementia at that time and was noted as not able to remember where she used to live.
- 1.3 On or about 7 September 2004 the client was assessed by her General Practitioner as having a Mini Mental Status Examination (MMSE) score of 6/30, denoting severe cognitive impairment.
- 1.4 In or about January 2005, the client had a period of respite care at the Sundale Garden Village -Bowder Lodge Hostel
- 1.5 On or about 20 January 2005 the respondent attended the client at Sundale Village and took instructions in respect of the preparation of the following documents ("**documents**"):
  - (a) An Enduring Power of Attorney;
  - (b) A Revocation of an existing New South Wales Power of Attorney; and
  - (c) A Will.
- 1.6 The Enduring Power of Attorney appointed the client's daughter, Jeanne-Anne Dwight, to be her attorney.
- 1.7 The Will appointed Jeanne-Anne Dwight as Executrix and Trustee with the residue of property to be divided equally among the client's three children.
- 1.8 As at the time of taking instructions from the client, the respondent knew or ought to have known that the client's may not have sufficient capacity ("**capacity issues**") to execute the documents.
- 1.9 Notwithstanding the capacity issues, the respondent arranged for the client to execute the documents on 21 January 2005.

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- 1.10 In breach of his duty as a solicitor, the respondent:
- (a) failed to conduct appropriate inquiries to satisfy himself that the client understood the legal effect of the documents and was capable of executing the documents;
  - (b) failed to seek a medical opinion verifying the client's capacity to sign the documents;
  - (c) failed to undertake an interview with the client in accordance with the Queensland Law Society's "*Capacity Guidelines for Witnesses of Enduring Powers of Attorney*";
  - (d) permitted the client to sign the documents in circumstances where he ought to have known that there were capacity issues;
  - (e) failed to make an appropriate written record of all steps taken in assessing competence, including all questions and answers.
- 1.11 On or about 24 January 2005 the client was assessed by her General Practitioner as having a MMSE score of 4-6/30, denoting severe cognitive impairment.
- 1.12 On 6 April 2005 the Adult Guardian provided a report to the Guardianship and Administration Tribunal concluding that on the balance of probabilities the client had impaired capacity for decision-making for her personal and financial matters.
- 1.13 On 26 April 2005 the Guardianship and Administration Tribunal declared the Enduring Power of Attorney dated 21 January 2005 invalid.

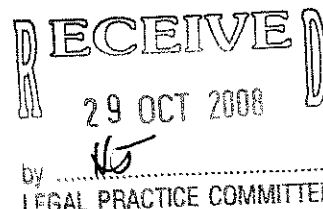
**C. TO THE RESPONDENT**

Alan Graham Taylor, Solicitor  
 North Coast Law  
 PO Box 92  
 PALMWOODS Qld 4555

This application will be heard by the Committee at a time and date to be fixed.

Filed in the Brisbane Registry on 29/10/2008.

Secretariat:



If you wish to contest this application, or to make submissions on penalty, you must lodge a Notice of Address for service with the Secretariat within fourteen [14] days of service of this application on you. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. If you fail to file a Notice of Address for service with the Secretary within fourteen [14] days of service of this application on you, the matter will be heard in default of your appearance, on a date to be fixed being not less than twenty one [21] days after service of this application on you.

**D. SERVICE**

## APPLICANT'S ADDRESS FOR SERVICE:

Name:	Legal Services Commission
Applicant's business address:	Level 25, 307 Queen Street. Brisbane Qld 4000
Address for service:	As Above
DX:	DX 40118 Brisbane Uptown
Telephone:	(07) 3406 7737
Fax:	(07) 34067749
E-mail address:	<u><a href="http://www.lsc@lsc.qld.gov.au">www.lsc@lsc.qld.gov.au</a></u>

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