

In the Matter of Neil Mervyn Ballment

Case No: SC/389
Date of Hearing: 17 June 1997
Appearing Before: Mr J S P O’Keeffe –
Chairman
Mr A W Watt
Mr G C Fox
Penalty: Suspended 5 years
(suspension order
conditionally stayed).

Charges

On 17 June 1997, the Statutory Committee heard charges laid by the Council of the Queensland Law Society against Neil Mervyn Ballment by Application dated 3 April 1997.

The practitioner faced 11 charges arising from four separate complaints. In respect of each complaint there were charges relating to breaches of Rule 82 and Rule 83. In relation to three of the complaints there was also a charge that Mr Ballment had failed to properly attend to the execution of his retainer with each respective client with the degree of diligence required of a solicitor.

Submissions

The Queensland Law Society and the practitioner were represented by solicitors. Affidavit evidence was filed by the Society. No evidence was called by the parties at the hearing. The practitioner, through his solicitor, pleaded guilty to all charges and admitted the facts in the particulars and conceded that his conduct constituted professional misconduct.

The Solicitor for the Society submitted as follows:

1. That the various charges in respect of breaches of Rule 82 and 83 showed a lamentable failure on the part of the practitioner to properly understand his statutory obligations to respond to the Society when asked to do so. It was pointed out that Rule 83 provided that failure to respond to the Statutory Notice amounted to professional misconduct and that no exculpatory evidence had been submitted by the practitioner.

2. In relation to the three charges concerning failure to attend client matters, the affidavit material showed that there had, over the relevant periods, been an absolute failure to carry out the work instructed. There was evidence that numerous telephone calls were not returned and that the practitioner treated clients with complete contempt. The question for the Statutory Committee was whether Mr Ballment was a fit and proper person to remain on the roll of solicitors at the Supreme Court of Queensland. The case authority was to the effect that the jurisdiction was a protective one and that consideration of the impact it would have on the practitioner was not relevant.
3. That the practitioner had a substantial history of previous convictions of charges relating to his failure to answer the Society’s correspondence and his failure to diligently pursue client matters. Mr Ballment’s disciplinary history was as follows
 - a) On 20 March 1985, he was found guilty of professional misconduct and ordered to pay a total of \$500 plus costs.
 - b) On 22 February 1988 he was found guilty of professional misconduct and fined a total of \$1,000 plus costs.
 - c) On 17 July 1990 he was found guilty of professional misconduct and was fined \$25,000 and ordered to pay costs.
 - d) On 15 May 1992 he was found guilty of professional misconduct and was fined \$5,000 plus costs (on this occasion, there was evidence that he had at the relevant time been suffering from Glandular Fever and Hepatitis and the Statutory Committee had taken the state of his health into account when determining the penalty).
 - e) As well, the practitioner had been censured on 13 August 1992 and 13 January 1994 under the hand of the President.
4. The history of the practitioner showed a consummate disregard for the interests of his clients, for his obligations to the Society, his statutory obligations under Rule 82 and 83 and for his obligation to the court as one of its officers to uphold the high standards of this profession.
5. That a psychologist’s medical evidence submitted by the practitioner suggested that he was not suited to practise as a principal. That there was no evidence from the psychologist or any other evidence that could give the Statutory Committee the slightest cause for confidence that the practitioner’s misconduct would not continue.

The practitioner’s solicitor submitted as follows:

1. A number of references were tendered which showed that in the community at large Mr Ballment was held in high regard.

2. That Mr Ballment acknowledged that he had an ongoing problem with procrastination and had taken steps to seek treatment initially through Law Care to address the problem.
3. That there was no suggestion of any dishonesty but merely procrastination.
4. That none of the persons referred to in the charges lost the benefit of their actions which were eventually satisfactorily concluded.
5. That the question for the Committee was really whether in the future Mr Ballment was going to be an unfit practitioner.
6. That Mr Ballment had taken steps to address the problem in seeking treatment and had also decided to give up practice and acknowledged that in the foreseeable future, he was not suited to practising on his own account.
7. That the references showed that he was able to work in the community so long as it was a structured environment.
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8. That undertakings tendered by Mr Ballment would satisfy the public protection requirement. He tendered a number of undertakings which were designed to remove him from the situation where he was his own boss and place him in an employed position. The undertakings were given unconditionally. They were not given on the condition that a particular result would come out of the proceedings. Mr Ballment acknowledged that if he breached the undertakings, there would be serious consequences.

Findings and Orders:

The Committee found the facts alleged in the Application of the Queensland Law Society Incorporated dated 3 April 1997, as amended in a minor way, such facts having been admitted by the practitioner, proved.

The Committee found that those facts constituted professional misconduct, which was admitted by the practitioner. The Committee found the practitioner guilty of professional misconduct. The Committee further found that this finding would normally warrant an order of striking off or a lengthy suspension from practice, having in mind the four other prior orders of the Committee and of the Solicitors' Disciplinary Tribunal.

The Committee considered the report of Dr Robert Schweitzer dated 13 June 1997. The Committee noted that there had been no dishonesty and no suggestions or evidence of personal gain. The Committee took into consideration the practitioner's undertakings:

1. To cease practising as a principal not later than 30 June 1997;
2. Not to make application to practise as a principal until at least 30 June 2002;
3. Not to make application to practise as a principal until he had completed successfully the Queensland Law Society Practice Management Course or such other course as the Council may from time to time prescribe;

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4. Not to make application to practise as a principal without providing to the Council of the Queensland Law Society a report from a psychiatrist or psychologist as to his capacity to practice, such report to be dated not more than six months from the date of his application;
 5. In relation to any employment as a practitioner in private practice, he would obtain from his employer, prior to the commencement of employment, a written undertaking that his work and files would be supervised to the satisfaction of the Director of Professional Conduct, which undertaking would be sent to the Council and accepted by it prior to the commencement of employment;
 6. In relation to his employment as a solicitor, other than by a practitioner in private practice, he would obtain from his employer, prior to commencing employment, and forward to the Society, an acknowledgment by the employer that he is aware of the order by this Committee in Application 389;

7. That he would advise the Society on or before 30 June 1997 of the manner in which he had disposed of his practice and deliver to the Society any files and trust monies not disposed of at that date.

In reliance upon the undertakings, The Committee ordered the practitioner, Neil Mervyn Ballment, be suspended from practice from the period of 1 July 1997 to 30 June 2002, such suspension to be stayed conditional upon the practitioner complying with the aforementioned undertakings.

The Committee further ordered that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to this application, the costs of the Clerk to the Statutory Committee and the shorthand writer, to be assessed or taxed, and the Committee directed that the Clerk to the Statutory Committee shall be entitled to his costs as a solicitor of perusing documents.