
Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr B D Bartley, solicitor of Corrs Chambers Westgarth, solicitors
- (b) For the practitioner:
Mr G M Egan of counsel instructed by the practitioner

Findings and Orders

1. The practitioner having pleaded guilty to the charge, the Tribunal found the facts as alleged in the Notice of Charge No. 14 dated 14 January 1998 proved.
2. The Tribunal found the practitioner guilty of

unprofessional conduct.

3. The Tribunal fined the practitioner the sum of seven thousand, five hundred dollars (\$7,500.00) to be paid by 30 September 1999.
4. The Tribunal ordered that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to the application including the costs of the Clerk to the Tribunal and the Recorder to be assessed or taxed.

Appeal

The Attorney-General and Minister for Justice has lodged an appeal contending that the penalty imposed was manifestly inadequate.

Solicitors Complaints Tribunal

In the Matter of Practitioner X

Case No: SCT/15
Date of Hearing: 6 July 1999
Appearing Before: Mr J S P O’Keeffe (Chairperson)
Mr T M Preston
Mrs M Green (Lay Member)
Penalty: Fined \$3,000.00

Charges

Section 31 Report

1. In breach of Section 5H(1) of Queensland Law Society Act 1952, the practitioner failed to provide to the Society an explanation in writing of the matters referred to in the Society’s letter to him dated 21 August 1998.
 - 1.1 On 18 September 1997, the Council of the Society appointed its employee, Grenville Hughes, pursuant to Section 31(1)(b) of Queensland Law Society 1952 (‘the Act’), to examine the accounts of the practitioner and to furnish to it a confidential report thereon.
 - 1.2 Mr Hughes completed the examination and the report to the Council and the copy of the said

report was sent to the practitioner on 3 April 1998.

- 1.3 By letter dated 22 July 1998 from the Society to the practitioner, the Society sought a response within fourteen (14) days in relation to the various matters referred to therein and the subject of the report.
- 1.4 By further letter to the practitioner dated 7 August 1998, the Society asked that the practitioner ensure that his reply to the Society’s letter of 22 July 1998 be delivered to the Society before the close of business on Wednesday, 19 August 1998. No such reply was delivered.
- 1.5 On 20 August 1998, the Council of the Society resolved that the Council, pursuant to Section 5F(2) of the Queensland Law Society Act, investigate the conduct of the practitioner and require him, pursuant to Section 5G, to give an explanation, within twenty-one (21) days of the matters the subject of the Society’s letter to him dated 22 July 1998.
- 1.6 The Society, by letter dated 21 August 1998, advised the practitioner of the Council’s resolution and advised that if he did not provide a sufficient and satisfactory reply to the Society’s letter of 22 July 1998 and did not provide an explanation for not replying to that letter and the Society’s letter of 7 August 1998, a Notice would be sent to him pursuant to Section 5H(2) of the Act and that failure to provide a sufficient and

satisfactory reply to that Notice may result in his being dealt with for professional misconduct.

- 1.7 The practitioner did not reply to that letter.
- 1.8 On 7 September 1998 the Society, under the hand of its Secretary, sent to the practitioner by facsimile transmission the Notice referred to in paragraph 1.6.
- 1.9 The practitioner failed to respond to the said Notice within the fourteen (14) day period therein.

SKA, GCA & MK

2. On or about 9 December 1997, the practitioner transferred from his general trust account to his general account the sum of \$250.00 then being held on behalf of his clients, SKA, GCA and MK, when he was not entitled to the said moneys.
 - 2.1 At all material times, the practitioner acted for SKA, GCA and MK in relation to a land resumption compensation claim.
 - 2.2 The claim was settled and compensation moneys of \$10,500.00 were received by the practitioner into his general trust account on 9 July 1997.
 - 2.3 On instructions from his clients, the practitioner paid from those moneys \$9,600.00 to his clients on 10 July 1997 and retained \$900.00 in his trust account for the purpose of paying his legal fees of \$650.00 and valuation fees of \$250.00.
 - 2.4 On 10 July 1997, the practitioner transferred the sum of \$650.00 to his general account in payment of his fees, leaving a balance of \$250.00 in his clients' individual trust ledger account.
 - 2.5 On 9 December 1997, the practitioner transferred into his general account the said sum of \$250.00 then remaining in his clients individual trust ledger account and earmarked for payment of valuation fees in purported payment of further legal fees of \$250.00, the subject of a bill of costs raised by him and dated 15 September 1997.
 - 2.6 At no time was the practitioner entitled to utilise the said sum of \$250.00 in payment of his legal fees.
 - 2.7 On or about 6 July 1998, he repaid the \$250.00 into his trust account from his general account.

P & K S

3. On or about 11 December 1997, the practitioner

misappropriated the sum of \$2,400.00 then held in his general trust account on behalf of various of his clients in payment of stamp duty for and on behalf of his clients P & K S when, at the time, no funds were held in his general trust account on behalf of those clients.

- 3.1 At all material times, the practitioner acted for P & K S (the clients) in their purchase from T Pty Ltd.
- 3.2 As at 11 December 1997, the practitioner held trust moneys in his general trust account on behalf of various clients other than P & K S.
- 3.3 On or about 11 December 1997, the practitioner drew a cheque for \$2,400.00 on his general trust account to facilitate payment on behalf of the clients P & K S of stamp duty on their contract to purchase from T Pty Ltd.
- 3.4 At the time of the said drawing and payment of the said cheque, the practitioner did not hold any funds in trust for P & K S with the result that the said cheque was met from funds of other clients on whose behalf he then held trust funds.
- 3.5 On 15 December 1997, the deficiency in the practitioner's general trust account was restored by him.

H Pty Ltd

4. On or about 5 November 1997, the practitioner, when trustee of the WUT, breached a written undertaking dated 20 October 1997 given by him to B & Co, Chartered Accountants, by paying \$110,000.00 from the trust's funds to T Pty Ltd without giving to B & Co at least fourteen (14) days notice of the details of that proposed distribution in terms of his undertaking.
 - 4.1 At all material times, the practitioner acted for H Pty Ltd (H) in the sale of a property then held by H in trust for the WUT of which unit trust the practitioner was then trustee.
 - 4.2 On or about 21 October 1997, the practitioner held in his general trust account the sum of \$123,225.31 on behalf of the said unit trust being the proceeds of sale of the property held by H Pty Ltd.
 - 4.3 One of the unit holders in the unit trust was R Pty Ltd of which company GB of B & Co, Chartered Accountants, had by 20 October 1997 been appointed liquidator.
 - 4.4 By letter dated 20 October 1997, the practitioner

gave the following undertaking to B & Co:

"That after payment out of the first registered mortgage (to E) and the necessary settlement adjustments, no moneys will be distributed to any of the creditors or unit holders of the company or the trust without giving you at least fourteen (14) days notice of the details of that proposed distribution."

- 4.5 On 5 November 1997, in breach of that undertaking, the practitioner paid \$110,000.00 to T Pty Ltd by way of unsecured loan without giving to B & Co any notice of the proposed payment in terms of the said undertaking.

Trust Account Audit

5. The practitioner, in breach of Section 16(2) of the Trust Accounts Act 1973, failed to lodge the Auditor's Report with the Chief Executive of the Department of Justice for the financial period ended 31 March 1998.
- 5.1 At all material times, the practitioner conducted a trust account and was a trustee within the Trust Accounts Act 1973 ("the Act").
- 5.2 Pursuant to Section 16(2) of the Act, the practitioner was obliged to cause his auditor to audit both the accounting and other records kept by him pursuant to Section 6 of the Act in relation to all trust moneys and any disbursement or disposal thereof or dealing therewith and his trust account established pursuant to Section 7 of the Act for the financial period ended 31 March 1998 and was obliged to lodge with the Chief Executive of the Department of Justice an Auditor's Report of that audit.
- 5.3 The practitioner, in breach of Section 16(2) of the Act, failed to lodge the said Auditor's Report.

Certificate Re: Deposit of Trust Moneys

6. The practitioner, in breach of Regulation 3 of the Legal Practitioners Regulations 1996, failed to give to Queensland Law Society a Certificate evidencing the practitioner's compliance with Section 51(2) of the Legal Practitioners Act 1995 for the financial period ending 31 March 1998.
- 6.1 At all material times, the practitioner conducted a trust account and was trustee within the Trust Accounts Act 1973.
- 6.2 Pursuant to Section 16(2) of that Act, the practitioner was obliged to cause his auditor to

audit both the accounting and other records kept by him pursuant to Section 6 of the Act in relation to all trust moneys and any disbursement or disposal thereof or dealing therewith and his trust account established pursuant to Section 7 of the Act.

- 6.3 Pursuant to Section 51(2) of the Legal Practitioners Act 1995, the practitioner was obliged to deposit with the Queensland Law Society certain of the moneys held in his trust account.
- 6.4 Pursuant to Regulation 3(2) of the Legal Practitioners Regulations 1996, the practitioner was obliged to obtain from his auditor who conducted the audit of his trust records and trust account pursuant to Section 16(2) of the Trust Accounts Act 1973, a Certificate in the approved form about the practitioner's compliance with Section 51(2) of the Legal Practitioners Act 1995, which Certificate was to be given by the practitioner to the Society within fourteen (14) days of the prescribed day for the financial period ended 31 March 1998 as set out in Section 16(1) of the Trust Accounts Act 1973, namely by 14 June 1998.
- 6.5 The practitioner, in breach of Regulation 3(2) of the Legal Practitioners Regulations 1996, failed to give the Certificate to the Society.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D G Searles, practitioner of McCullough Robertson, Solicitors.
- (b) For the practitioner:
The practitioner appeared in person.

Findings and Orders

1. The Tribunal found all the charges proved.
2. The Tribunal found that the facts constitute professional misconduct.
3. The Tribunal found the practitioner guilty of professional misconduct.
4. The Tribunal ordered that the practitioner pay a penalty of \$3,000.00 and the Tribunal further ordered that the practitioner be allowed three (3) months to pay.
5. The Tribunal further ordered that the practitioner pay

the costs incurred by the Queensland Law Society Incorporated of and incidental to these proceedings, such costs to be agreed upon, assessed or taxed.

Reasons

The practitioner admitted the facts contained in all six charges.

He elected to give sworn evidence. The Tribunal was satisfied that the practitioner was honest and frank in giving his evidence in chief and under cross-examination. He furnished explanations of his conduct in respect of all charges and the Tribunal took his explanations into account when considering the imposition of penalty.

Solicitors Complaints Tribunal

In the Matter of Andrew Charles Lauchland

Case No: SCT/16
Date of Hearing: 13 July 1999
Appearing Before: Mr J S P O'Keefe (Chairperson)
Ms C C Endicott
Mr G Campbell-Ryder (Lay Member)
Penalty: Struck off

Charges

1. The practitioner:

- 1.1 By a letter dated 26 July 1994, falsely informed Messrs O, solicitors for the first and second defendants in Magistrates Court (Coolangatta) proceedings No. 186 of 1991 brought by him on behalf of his client S that:
 - 1.1.1 he had had a lengthy conference with his said client and her parents on the previous evening;
 - 1.1.2 he had received 'initial instructions' to discontinue the proceedings against the third defendants;
 - 1.1.3 his instructions were to make application to have the matter transferred to the District Court at Southport;
 - 1.1.4 his client understood that O's costs of the adjournment would have to be met, when he well knew that he had had no such conference and had received no such instructions.

- 1.2 By letter dated 26 July 1994, falsely informed Messrs W, solicitors for the third defendant in the said proceedings that:
 - 1.2.1 he had had lengthy discussions with his said client on the previous evening;
 - 1.2.2 his client had given instructions to have the action transferred to the District Court at Southport;
 - 1.2.3 his client had given instructions to discontinue the proceedings against Ws' client, when he well knew that he had had no such conference and had received no such instructions.
- 1.3 By letter dated 26 July 1994, falsely informed the Registrar of the Magistrates Court Coolangatta that:
 - 1.3.1 his said client had given instructions to make application to have the matter remitted to the District Court;
 - 1.3.2 he held instructions to discontinue the proceedings against the third defendant, when he well knew that he held no such instructions.
- 1.4 On or about 26 July 1994, fraudulently affixed or caused to be affixed to an affidavit prepared in the name of his client S, the signature LHS.
- 1.5 On or about 26 July 1994, filed or caused to be filed the said affidavit in the Brisbane Registry of the District Court of Queensland, thereby propounding it to the Court as an affidavit duly executed.
- 1.6 On or about 29 July 1994 agreed, purportedly on behalf of his said client, with the solicitors for the first and second defendants to settle his client's