

imposed on the issue of a Practising Certificate, his name will then be on the roll of solicitors and he may resume his practice. Thus stated, it will be seen that in cases of present unfitness an order for suspension will not frequently be appropriate because it is difficult for a tribunal to feel confident that at the expiration of one or more years a person presently unfit for practice will be fit. The use of the power to suspend is valuable as a punitive measure but needs cautious application where fitness and the Court's protective function is involved."

20. In *Jauncey v Law Society of NSW (Court of Appeal NSW, unreported, 1 February 1989)* Clarke J after referring to this passage from the reasons of Reynolds J A stated:

"I agree with these observations although I think it should be recognised that an order of suspension may be appropriate in limited circumstances. This is more likely to arise in cases where an order is made long after the misconduct which demonstrated unfitness occurred and a meritorious degree of rehabilitation extending over the interval between this conduct and the hearing of the case has been shown."

Observations to the like effect were made by the Full Court of Queensland in *Mellifont v The Queensland Law Society Inc (1981) QdR 17 at 31*.

21. The Court could not be satisfied that at the expiration of any period the practitioner would be a fit and proper person to be held out as a member of the profession of solicitors.

22. Third, the form of the order by the Statutory Committee made the period of suspension uncertain and therefore inappropriate. It might have operated for a very long time. The imposition of a suspension for a long time was discouraged in *Mellifont v The Queensland Law Society Inc*.

Orders, by consent, of Court of Appeal

1. That the part of the orders of the Statutory Committee of the Queensland Law Society Incorporated ("the Statutory Committee") of November 11, 1997 whereby the Statutory Committee ordered that the practitioner be suspended from practice until such time as he is able to satisfy the Council of the Queensland Law Society Incorporated that he is a fit and proper person to hold a Practising Certificate, be set aside.

2. That the name of the practitioner be struck off the roll of solicitors of the Supreme Court of Queensland.

3. That the practitioner pay the costs of the Queensland Law Society up to and including February 26, 1998.

(The Attorney General and Minister for Justice also lodged an Appeal, No. 11284 of 1997 on December 12, 1997. A similar order was made in that Appeal).

The Queensland Law Society Statutory Committee

Court of Appeal Hearing

Appellant: The Queensland Law Society
Respondent: Craig Stephen Bax
Appeal no.: 7423 of 1997

Appeal

Both the Council of the Society and the Attorney-General lodged appeals against the inadequacy of the penalty.

The Statutory Committee had fined Craig Stephen Bax \$15,000 on July 29, 1997. The charges brought against the practitioner were:

1. That he signed as witness of a Deed of Loan which was purported to have been executed on March 30, 1993 but which was not executed until after September 20, 1993, as the practitioner well knew. The practitioner thereby falsely represented that the Deed of Loan had been executed on March 30, 1993.
2. That the practitioner signed as witness a Bill of Mortgage purported to have been executed on March 30, 1993, but which was not in fact executed until

after September 20, 1993, as the practitioner well knew. The practitioner thereby falsely represented that the Bill of Mortgage had been executed on March 30, 1993.

3. On May 24, 1994, the practitioner falsely represented at a creditors' meeting that the Bill of Mortgage had been executed in March 1993, when in fact he knew that the Bill of Mortgage had not been executed until after September 20, 1993.

Findings and Orders

The Appeal Court found the charges proven and that the attitude of the solicitor towards the matter was not such as to suggest that suspension, rather than striking off, was the proper remedy.

The Court ordered:

1. Allow appeals by the Queensland Law Society Incorporated and by the Minister for Justice and Attorney-General.
2. Set aside the order of the Statutory Committee made on July 29, 1997 that the respondent be fined the sum of \$15,000.
3. Order in lieu that the name of the respondent be struck off the roll of solicitors.

4. Order that the respondent pay the costs of the Minister for Justice and Attorney-General relating to his appeal, to be taxed, and pay the costs of the Queensland Law Society Incorporated relating to the appeal, fixed at the sum of \$2,000.

The Queensland Law Society Solicitors Complaints Tribunal

In the Matter of practitioner X

Charge No: 1
Date of Hearing: 5 May 1998
Appearing Before: Mr T M Treston
(Chairperson)
Mr M Meadows
Mr G Campbell-Ryder (Lay Member)
Penalty: Fined \$7,500

Charges

On May 5, 1998 the Solicitors Complaints Tribunal heard charges laid by the Council of the Queensland Law Society by Notice of Charge dated March 3, 1998 against practitioner X. The practitioner pleaded guilty to the following charges:

1. That in breach of Rule 84 of the Rules of the Queensland Law Society Incorporated ("the Society"), the practitioner has failed or neglected to render a bill of his costs in the matter of the estate of Mr Y deceased within a reasonable time of being so requested by letter dated October 15, 1996 from solicitors on behalf of the executor of the said estate.

2. That the practitioner has failed to keep the said executor fully apprised of all significant developments in relation to the said estate, despite being requested to do so.

Particulars

- (a) On or about the following dates, the executor of the estate telephoned the practitioner requesting that the practitioner return his telephone call in relation to the estate:

- 20 May 1996
- 3 June 1996
- 21 June 1996
- 12 July 1996 (two calls)
- 29 July 1996

- (b) By letter dated August 5, 1996 the executor requested the practitioner to provide a report in relation to the finalisation of the said estate.

- (c) By letter dated August 27, 1996, solicitors for the executor requested from the practitioner a report as to the position of the estate.
 - (d) By letter dated September 25, 1996, solicitors for the executor requested of the practitioner "a copy of the Probate document, a list of assets as disclosed in the probate application and a report on what has still to be done".
 - (e) By letter dated October 15, 1996, solicitors for the executor sought from the practitioner "a copy of your trust account ledger page or other accounting from which our clients will be able to ascertain what transactions have taken place".
 - (f) By letter dated November 8, 1996, the Society sought from the practitioner a sufficient and satisfactory explanation in respect of the matters raised in a letter dated November 1, 1996 from solicitors for the executor to the Society seeking assistance in relation to the matters raised in the letters particularised in sub-paragraphs (b) to (e) hereof.
 - (g) By letters dated November 26, 1996 and December 20, 1996, the Society sought from the practitioner a response to its letter dated November 8, 1996.
 - (h) The practitioner failed to respond to the requests particularised in sub-paragraphs (a) to (g) hereof save that:
 - (i) On September 11, 1996 the practitioner telephoned the solicitors for the executor and advised to the effect that finalisation of the estate had been delayed, that there was about \$6,000 in the practitioner's trust account and that there were a few loose ends;
 - (ii) On December 11, 1996, the practitioner advised the Society that he had forwarded the balance of the moneys held in his trust account to the solicitors for the executor and that he would be responding to the complaint during the course of the week.
3. That the practitioner ignored repeated requests made by the Society and by the solicitors acting on behalf of the said executor that the practitioner deliver to the executor's solicitors his file in relation to the estate.