In the Matter of Douglas Macleod Beames

Case Number: SCT/114
Date of Hearing: 15-16 October & 17 November 2003
Appearing Before: Ms C C Endicott (Chairperson/Practitioner Member)
Mr G C Fox (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)

Penalty: Struck off

Charges

1. The practitioner mixed his personal affairs with those of his clients.

Particulars

(a) At all material times up to 28 July 2000 the practitioner was the registered proprietor of properties situated at 59 and 61 Gillan Street, Norman Park, described respectively as lots 29 and 28 on RP12574, County Stanley, Parish Bulimba ("lot 28" and "lot 29" respectively); on 28 July 2000, lot 28 was transferred to MBC and FGF;

(b) On or about 13 March 1997, the practitioner made application to register a plan of survey in relation to lot 29 ("Plan 905522"), which application was refused by the Registrar of Titles ("Registrar").

(c) By action number 2842 of 1997, the practitioner made application in the Supreme Court of Queensland to review that refusal. On 2 April 1998, Muir J directed the Registrar to register Plan 905522; on 13 November 1998, the Court of Appeal dismissed the Registrar's appeal against the decision of Muir J.

(d) On or about 25 November 1998, the practitioner lodged for registration a plan of survey in relation to lot 28, which plan has not been registered ("the unregistered plan").

(e) On 26 February 1999, the practitioner successfully made application to Muir J for an order that the Registrar correct the land register in respect of lot 29 by properly recording particulars of Plan 905522.

(f) By letters dated 27 April 1999 and 22 July 1999, the practitioner solicited from the owners of properties situated in Hilton Terrace, Noosaville, instructions to act on their behalf to apply to extend the title to their properties to the Noosa River or alternatively, to apply for compensation.

(g) In or about July 1999, the practitioner entered into client agreements with the owners of various properties situated in Hilton Terrace namely:

CQPL

ENPL

FMPL

and proposed that client agreements be entered into by other owners of properties in Hilton Terrace, namely:

The executors of the estate of JAM

The BCKB

The BCRC.

(h) The client agreements related to the practitioner's acting in relation to the redefinition of the boundaries of the clients' properties in Hilton Terrace so that the Noosa River would constitute the northern boundary of those properties or alternatively, claiming compensation for loss of the Noosa River as such boundary.

(i) On 27 August 1999, the State of Queensland instituted action number 7742 of 1999 against the practitioner in the Supreme Court of Queensland alleging that:

(i) the plans of survey lodged by the practitioner (Plan 905522 and the unregistered plan) showed increases in area of about 601 square metres and 41 square metres in relation to lots 29 and 28 respectively, being the result of alteration of the boundaries of those lots with Norman Creek from the high water mark identified in the plan of subdivision registered in 1915 to the high water mark recorded in the plans lodged by the practitioner;

(ii) such increases were the result of reclamation and that the State of Queensland was entitled to ownership of the land created by the reclamation pursuant to s10 of the *Land Act* 1994;

(j) The practitioner defended action number 7742 of 1999 on the basis that:

(ii) ss9 and 10 of the *Land Act* had no application to freehold land;

(ii) the increases in area were the result of gradual and imperceptible accretions to lots 28 and 29

and counter-claimed against the State of Queensland for damages in the sum of US$270 million.

(k) On 8 May 2001, Wilson J dismissed the practitioner's application for summary judgment in action number 7742 of 1999 and on 21 June 2002, the Court of Appeal dismissed the practitioner's appeal (no 5021 of 2001) against that decision.

(l) The work carried out by the practitioner pursuant to the client agreements included the prosecution of action number 7742 of 1999. Particulars of some of the work performed by the practitioner pursuant to the client agreements are set out in:

(i) Accounts dated 29 September 1999 rendered by the practitioner in his capacity as a consultant to the firm CR to DP (on behalf of FMPL), NO (on behalf of CQPL) and CP (on behalf of ENPL);

(ii) The practitioner's "Report on Hilton Terrace properties on the Noosa River to 30 September 1999";

(iii) The practitioner's "Report on Hilton Terrace properties on the Noosa River to 05 November 1999";

(iv) The practitioner's "Report on Hilton Terrace properties on the Noosa River to 30 November 1999";

(v) Document entitled "The Hilton Tce Report 1 December 1999 to 19 May 2000";

(vi) Letter from the practitioner to NO and CP dated 30 June 2000.

(m) In or about November 2000, the practitioner entered into an option agreement with the executors of the estate of JAM ("the grantors") whereby:

(i) the practitioner agreed to pay the grantors' costs of an application to the Minister for Natural Resources for restoration of the Noosa River as the boundary of the grantors' property situated at 110 Hilton Terrace, Noosaville;

(ii) the practitioner was granted an option to purchase the grantors' property for the sum of $1m, which option was exercisable on or before 20 November 2002;

(iii) the option would become null and void on payment to the practitioner of the greater of $600,000.00 or 20% of the increase in value of the subject property over the sum of $1m.

(n) The purpose and effect of the option agreement was that the practitioner be retained on a contingency basis to act for the grantors and to receive, in the event that the application to the Minister were successful, 20% of the resulting increase in value of the grantors' property subject to a minimum fee of $600,000.00.

(o) By facsimile dated 14 December 2000, the practitioner proposed to NO (on behalf of CQPL) that the anticipated outlays proposed to be incurred in relation to CQPL's application with respect to the boundaries of its property at Hilton Terrace be funded by way of an option agreement to be entered into between the practitioner and CQPL.

(p) The practitioner's proposal to CQPL was put in conjunction with a proposal that the sum of $375,000.00 be raised through a stockbroker, SC, by selling to persons providing that sum, an interest in the proceeds of CQPL's application.

(q) The practitioner borrowed sums totalling $10,000.00 from his clients, the executors of the estate of JAM for the purpose of funding his litigation with the Council of the Shire of Noosa ("the council") being action D314/01.

2. The practitioner entered into a contingency fee agreement with his clients, the executors of the estate of JAM.

Particulars

Subparagraphs 1(m) and 1(n) above.

3. In breach of r86 of the *Queensland Law Society Rules* 1987, the practitioner borrowed sums totalling $10,000.00 from his clients, the executors of the estate of JAM.

Particulars

(a) Request from practitioner to S Wust dated 8 August 2001

(b) Payments:

28.08.01	$4,000.00
28.08.01	$4,000.00
30.08.01	$2,000.00
	$10,000.00

4. The practitioner proposed to NO on behalf of CQPL that the practitioner be retained pursuant to a contingency fee agreement.

Particulars

Subparagraph 1(o) above.

5. The practitioner failed to maintain reasonable standards of competence.

(a) The practitioner advised CQPL, ENPL and the executors of the estate of JAM to the effect that:

(i) "... the only obstacle in the way of making the application to the Minister to correct the titles under s359 of the *Land Act* 1994, remains the current litigation by the State of Queensland against [the Practitioner]... Our aim is to dispose of this action quickly, and to this end, we are hoping to bring actions for summary judgment against the State dependent upon our assessment of particulars provided by this coming Tuesday" (Report on Hilton Terrace Properties on the Noosa River to 05 November 1999);

(ii) "The reasoning behind drawing a parallel between the Norman Creek case ([the Practitioner]) and the Hilton Terrace case is simply that the trial of the former will provide a binding precedent for the correction of the certificates of title relative to the Hilton Terrace lands without the public outcry" and that "During the seventies (when a s10 was not available), the then owners of Hilton Terrace lands were coerced into the surrender of titles by the Noosa Council's fraudulent claim that the Land Court decision had enabled the Noosa Council to resume the land" (The Hilton Terrace Report 1 December 1999 to 19 May 2000);

(iii) The issue of deeds of grant to their predecessors in title in about 1977 were not the result of "innocent mistake" but that title had been obtained by the Noosa Council by fraud ("General Report on properties on the Noosa River side of Hilton Terrace – 100-130 inclusive") prepared in or about June 1999.

(b) The practitioner failed to advise CQPL, ENPL and the executors of the estate of JAM to the effect that (unlike his properties at Gillan Street, Norman Park):

(i) titles to their properties were not defined by reference to the watercourse, but by fixed boundary lines;

(ii) those boundary lines on the northern side of their properties were the result of dealings effected in or about 1977 whereby the then registered proprietors of the properties (including JAM) had surrendered their titles to the State of Queensland in return for the grant of new titles;

(iii) because (in the cases of CQPL and ENPL) their titles to their respective properties had been acquired subsequently to the dealings effected in about 1977, they had no entitlement to claim title to land not included in the titles granted in about 1977.

(c) By application no 125 of 2002, the practitioner made application on behalf of CQPL against the State of Queensland, the Council of the Shire of Noosa and the Registrar for orders cancelling the existing title to CQPL's property in Hilton Terrace and requiring issue of new titles to an increased area bounded on the northern side by the Noosa River.

(d) CQPL's application no 125 of 2002 was dismissed by Fryberg J on 30 January 2002 and CQPL was ordered to pay the respondents' costs of the application.

(e) By application no 1224 of 2002, filed on 7 February 2002, the practitioner made application on behalf of CQPL against the State of Queensland, the Council of the Shire of Noosa and the Registrar for the same relief as had been sought in application no 125 of 2002.

(f) On 22 February 2002, application no 1224 of 2002 was dismissed and CQPL was ordered to pay the respondents' costs on the indemnity basis

(g) On or about 31 May 2002, the practitioner made application on behalf of ENPL against the Registrar, the State of Queensland, the Council of the Shire of Noosa and the National Australia Bank Limited for substantially the same relief as that claimed on behalf of CQPL in applications 125 of 2002 and 1224 of 2002 and on substantially the same grounds as were relied upon in support of CQPL's application.

(h) On 19 June 2002, ENPL's application was dismissed by Chesterman J and ENPL was ordered to pay the respondents' costs of the application to be assessed on the indemnity basis.

(i) The practitioner lodged an appeal to the Court of Appeal against the decision of Chesterman J in the ENPL proceedings and made application for leave to appeal against the decision of Fryberg J in the CQPL proceedings; that appeal and application were dismissed with costs on 24 April 2003.

6. The practitioner has, in the course of litigation, made allegations without a sufficient factual basis and without reasonable grounds for making those allegations.

Action D314/2001 District Court Maroochydore

(a) On 18 July 2001, the council instituted proceedings against the practitioner seeking injunctions restraining the practitioner from trespassing onto Chaplin Park, from fencing off any part of the park or otherwise attempting by any means to exclude the council and/or members of the public from any part of it and from erecting a fence in Chaplin Park.

(b) The proceedings were instituted by the council as a result of the practitioner's having fenced off a part of Chaplin Park in order, as was asserted by the practitioner, to protect members of the public from possible damage which might be occasioned during geotechnical investigations the practitioner intended to undertake on the land with a view to determining where the high water mark for the Noosa River was or had been, that being a matter relevant to the determination of rights asserted by owners of properties in Hilton Terrace abutting Chaplin Park.

(c) On 27 July 2001, the council obtained an interlocutory injunction restraining the practitioner, *inter alia*, from excavating, digging, taking samples or undertaking any geotechnical surveys in the park; that injunction was extended from time to time and remained in force until 8 February 2002 when the practitioner gave an undertaking to the court to similar effect, having advised the council by letter from his solicitors dated 1 February 2002 that he no longer had any wish or need to visit Chaplin Park or to carry out any excavating, digging, taking samples or conducting any geotechnical surveys.

(d) By order made on 24 April 2002, Judge Dodds:

(i) gave the council leave to discontinue the proceedings;

(ii) ordered that, if the practitioner wished to pursue a claim for damages pursuant to undertakings given to the court by the council in relation to the granting of the injunctions, then a statement of claim should be filed by the practitioner within 28 days.

(e) On or about 22 May 2002 the practitioner filed a statement of claim asserting that he had suffered losses and seeking damages in the sum of $16,442,674.00 comprising:

(i) $5 million for the lost opportunity to earn fees pursuant to the practitioner's agreement with an unnamed "owner of lands unlawfully separated from the Noosa River by Chaplin Park" (statement of claim paragraph 5.0);

(ii) $557,674.00 for loss of opportunity to recover costs relating to:

(A) resisting the creditor's petition against the practitioner;

(B) appeal 5021 of 2001 (in action number 7742 of 1999 in the Supreme Court of Queensland);

(C) the Maroochydore District Court proceedings;

(D) various work undertaken by the practitioner's employer, CR;

(iii) $600,000.00 for loss of opportunity to earn fees in an estimated 60 other matters involving "title correction";

(iv) $10 million for loss of commercial opportunities by reason of being prevented by the interlocutory injunctions from paying $22,000.00 to his petitioning creditor and thereby avoiding bankruptcy.

(f) The claims made in the statement of claim lacked any sufficient factual basis and were made without any reasonable grounds because neither the practitioner nor his clients who owned properties in Hilton Terrace abutting Chaplin Park had any interest in (nor right to carry out any excavating, digging, taking samples or undertaking any geotechnical surveys in) Chaplin Park for the reasons set out in the judgments referred to in subparagraphs 4(d), 4(f), 4(h) and 4 (i) hereof.

Sale of Lot 28 and Bankruptcy Application

(g) In or about September 1995, the practitioner borrowed from LMPL sums totalling $384,000.00 and on or about 29 August 1995, granted mortgages over lots 28 and 29 as security for such loans.

(h) The practitioner defaulted in payment of the second monthly instalment of interest in the sum of $5,440.00 which was due on 1 November 1995 and thereafter has made no payment to the mortgagee save for a payment in the sum of $500.00 made on or about 20 November 1998.

(i) On or about 31 October 1997, LMPL assigned to GIR the debt due by the practitioner and its interest as mortgagee of lots 28 and 29.

(j) By facsimile dated 13 March 1999 to RWM, the agents appointed by GIR to sell lot 28 and copied to R of CRS and to W of WC, the practitioner asserted that those agents "should obtain proper legal advice before continuing on your present course or taking any further instructions from R. Without seeking and heeding such advice, you risk being implicated in a most serious fraud." R was GIR's solicitor.

(k) By facsimile dated 19 March 1999 to CRS and copied to McT of ST, A of RWM and W, the practitioner asserted to the effect that the facsimile referred to in subparagraph (d) was properly founded upon the fact that there was "no mortgagee in possession of my land or there is no mortgagee capable of lawfully exercising power of sale in respect of my land";

(l) On 15 December 2000, GIR caused a bankruptcy notice to be served on the practitioner and on 26 July 2001, caused a creditor's petition to be served on the practitioner.

(m) The practitioner opposed the making of a sequestration order upon the grounds, *inter alia*, that:

(i) GIR was not a creditor because:

(A) Lee J had, on 21 March 1997, in action number 1591 of 1997 in the Supreme Court of Queensland, refused to grant an injunction restraining the practitioner from interfering with the mortgagee's exercise of its power of sale because there was a triable issue as to whether the mortgagee should be permanently restrained from exercising its power of sale;

(B) If the mortgagee were permanently restrained, then the mortgagee would not be a creditor;

(ii) The practitioner had a counterclaim against GIR for loss of commercial opportunity in the sum of $31,426,000.00 quantified as set out in paragraph 33 of the practitioner's affidavit sworn on 23 November 2001 and comprising as to the sum of A$30 million part of the damages amounting to US$300 million claimed by the practitioner against the State of Queensland in action number 7742 of 1999 in the Supreme Court of Queensland.

(n) The grounds referred to in subparagraph (g) lacked any sufficient factual basis and provided no reasonable basis for refusing to make the sequestration order because:

(o) the practitioner had, by order of Muir J dated 19 June 2000, been restrained from lodging any caveat in relation to lots 28 and 29 without leave of the court;

(p) GIR was a creditor to whom the practitioner was in substantial default for the reasons set out in subparagraphs (a) and (b) under the heading "Sale of Lot 28 and Bankruptcy Application";

(q) The alleged causal relationship between the sale of lot 28 by GIR as mortgagee and the damages claimed by the practitioner against GIR was fanciful.

Action Q7017 of 2002 – Federal Court of Australia

(r) On or about 26 September 2002, the practitioner filed originating application Q7017/02 in the Federal Court of Australia against his Trustees in Bankruptcy, K and L as respondents, seeking equitable relief and/or damages for the alleged gross negligence and breach of fiduciary duty of the respondents.

(s) The relief sought by the practitioner included:

  (i) re-vesting in himself all property which vested in the respondents upon their being appointed to act as the practitioner's trustees in bankruptcy;

  (ii) damages (including exemplary damages) of $40 million;

  (iii) an order that the respondents be removed as the practitioner's trustees in bankruptcy;

(t) By affidavit sworn on 10 October 2002, the practitioner asserted that:

  (i) K was not his trustee in bankruptcy (paragraph 3);

  (ii) K was not the respondent to the practitioner's application (paragraph 3);

  (iii) K had no standing in the proceedings (paragraph 3);

  (iv) Crown Law had engaged in "deliberately misleading the Supreme Court of Queensland and the Court of Appeal", had engaged in "deception and had a propensity for deliberately misleading courts" (paragraph 8);

  (v) By requiring the practitioner to provide the sum of $10,000.00 to fund independent legal examination of the practitioner's causes of action as a precondition to continuance of those actions, K had breached s415 of the *Criminal Code* which provides that it is a crime punishable by 14 years imprisonment to threaten injury or detriment with intent to extort or gain any property or benefit or performance of service (paragraph 8).

(u) On the hearing of the practitioner's application before Kiefel J on 6 November 2002, the practitioner made submissions to the effect that:

  (i) the State of Queensland "risked the exposure of this business of falsely certifying certificates of title" (transcript page 28);

  (ii) his trustees in bankruptcy had participated "in the scam to keep these proceedings away from court" (transcript page 29); the practitioner then withdrew his use of the term "scam", substituting the description "scheme".

(v) The assertions and submissions referred to in subparagraphs (c) and (d) lacked any sufficient factual basis because:

  (i) the practitioner had attended a meeting of his creditors on 18 July 2002 at which K (and L) had been appointed as his trustees in bankruptcy and were described as such in the originating application to which K (and L) were respondents;

  (ii) K's requirement that he be put in funds in the sum of $10,000.00 to enable independent legal opinion to be obtained was reasonable and in accordance with usual practice;

  (iii) there was no evidence to support the allegations against Crown Law or the State of Queensland.

Application Q184 of 2002 in the Federal Court of Australia

(w) On 28 November 2002, the practitioner filed originating application number Q184 of 2002 in the Federal Court of Australia against PA (described as "trustee in bankruptcy") seeking equitable relief and/or damages (including exemplary damages for breach of duty) as trustee not exceeding $17 million and an order that the bankruptcy notice which had founded the creditor's petition filed on 3 July 2001 be set aside.

(x) PA was an employee of ITSA who had acted in the practitioner's bankruptcy with the authority of the practitioner's original trustee in bankruptcy, the Official Trustee.

(y) By affidavit sworn on 25 November 2002, the practitioner asserted that:

  (i) "... the respondent was fully aware of the grounds for judgment in my favour in proceeding D314/01 – *Council of the Shire of Noosa v [the Practitioner] and the State of Queensland*. In those circumstances, the respondent was in gross dereliction of his duty as trustee when he failed to attend the District Court at Maroochydore, Queensland (exercising equitable jurisdiction) on 5 July 2002 or before the proceedings were deemed abandoned pursuant to s60(3) of the *Bankruptcy Act* 1966 and obtained judgment in the amount of $16,442,674.00 plus costs" (paragraph 3);

  (ii) by failing to realise the "judgment in an amount well in excess of my total indebtedness", the respondent had demonstrated that the purpose of the bankruptcy proceedings was to achieve the abandonment of the practitioner's causes of action pursuant to s60(3) of the *Bankruptcy Act* and accordingly, the bankruptcy notice was an abuse of process (paragraph 5).

(z) The claims made by the practitioner in his affidavits sworn on 25 November 2002 lacked any sufficient factual basis and were made without reasonable grounds because:

(i) the practitioner had not obtained judgment in the District Court for damages to be assessed, but merely had a right to pursue a claim for damages, as the practitioner was well aware from the hearing on 6 November 2002 (transcript page 10 and judgment Kiefel J paragraph 4);

(ii) of the matters referred to in subparagraph (f) under the heading Action D314/2001 District Court Maroochydore.

Re-litigation of issues – various proceedings

(aa) In relation to the applications made by the practitioner on behalf of CQPL, the facts alleged in subparagraphs 4(c)-4(f) hereof;

(ab) By action number S1161 of 2002 instituted by the practitioner against the State of Queensland and others, the practitioner sought to re-litigate the issue determined by Muir J on 7 May 1999 in action number 1170 of 1999;

(ac) In relation to the application made by the practitioner on behalf of ENPL, the facts alleged in subparagraphs 4(g)-4(h) hereof.

Action S1335 of 2002 in the Supreme Court of Queensland

(ad) On or about 11 February 2002, the practitioner filed originating application number 1335/02 in the Supreme Court of Queensland against MBC and FGF, PTAL and the Registrar seeking orders, *inter alia*:

(i) that the title of MBC and FGF in lot 28 be cancelled by the Registrar;

(ii) that the Registrar create a new title to lot 28 recording the practitioner as the registered proprietor.

(ae) The practitioner's application was dismissed on 1 May 2002 by Byrne J who held that:

(i) the propositions sought to be advanced by the practitioner were "not fairly arguable";

(ii) the prosecution of the application was "essentially vexatious".

(af) On or about 10 May 2002, the practitioner filed notice of appeal against the decision of Byrne J.

Application B40 of 2002 in the High Court of Australia

(ag) On 25 June 2003, the practitioner appeared on the hearing of his application for special leave to appeal to the High Court against the decision of the Court of Appeal in favour of the State of Queensland, and made allegations:

(i) that the State of Queensland engaged in an "unlawful practice" of "arbitrary boundary fixation" involving "corruption of the Office of Registrar of Titles";

(ii) that the State of Queensland had delayed the litigation "for no purpose other than to allow the mortgagee sufficient time to bankrupt me";

(iii) that the Registrar of Titles had engaged in deceit,

which allegations had no reasonable basis.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr B Bartley, Solicitor of Messrs Brian Bartley & Associates Solicitors

(b) For the Practitioner:
The Practitioner appeared in person.

Findings and Orders

1. The Tribunal finds Charges 1, 4, 5 and 6 proved.

2. The Tribunal finds Charges 2 and 3 not proved.

3. The Tribunal finds the charges proved amount to professional misconduct and finds the Practitioner guilty of professional misconduct.

4. The Tribunal orders that the name of the Practitioner be struck from the Roll of Solicitors of the Supreme Court of Queensland.

5. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated incidental to this application, including any reserved costs, together with the costs of the recorder and the Clerk such costs to be agreed, and if not agreed, to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

Findings

Despite the practitioner's attacks on the Law Society's evidence, he did not require the Law Society witnesses for cross-examination. We accept their evidence.

The Practitioner's evidence varied considerably during these proceedings and was often disjointed and illogical. We find his evidence unreliable.

Charge 1 alleges the mixing of the practitioner's personal affairs with those of his client. He has based his contention that he was not acting for these parties variously on the bases that CR and not he were acting; that his instructions had expired; that he was acting as co-ordinator, not solicitor; and, later, that he was acting as advocate rather than solicitor.

These contentions are baseless. Being a solicitor is not a cloak one can take on and off at will, any more than a solicitor can hide from his conduct behind the shield of his employer.

He readily acknowledges that the firm CR entered into client agreements with CQPL, ENPL, and FMPL. He was a solicitor at that firm responsible for the carriage of these matters.

He was somewhat uncertain as to the duration of these agreements. He represented CQPL and ENPL in court proceedings at a later stage.

On 29 September 1999, memoranda of costs were prepared directed to the principals of those companies. The bulk of the work in those accounts relates to work undertaken in connection with the practitioner's own affairs. An account was prepared dated 30 June 2002 addressed to CP, the principle of ENPL. The accompanying letter makes it clear that the work charged relates to the practitioner's personal affairs.

A letter in similar terms was addressed to NO, the principal of CQPL. The practitioner does not admit that they were sent. He now says that the letters were to pretend to his employer that the letters and account were being sent.

Whether or not they were sent, they are clear evidence of he practitioner's state of mind as to his relationship with these parties. He acknowledges in his evidence, "my personal affairs were inextricably mixed with theirs."

The Tribunal has no doubt the practitioner acted for those parties. There is no doubt that his representation was inextricably bound up with his own affairs. The Practitioner denies his representation of FMPL, however the lengthy correspondence between that company and CR makes this denial difficult to accept.

We find charge 1 proved.

Charges 2 and 3 relate to contingency fee arrangements and borrowings from a client. The charges relate to the JAM family. We are not satisfied that the members of the JAM family were at the relevant time clients of the practitioner to the standard of proof and standard of evidence required by the *Brigginshaw* test.

We find charges 2 and 3 not proved.

Charge 4 alleges the contingency fee arrangement with CQPL. The Practitioner in cross-examination told us he never acted for CQPL, that he did not undertake anything for CQPL for the purpose of profit, and the offer of the 20% success fee was fanciful.

We cannot accept this and it is in variance with his other evidence about arrangements reached with other people. For example, the option he signed with the JAM family allowed in effect for just such a success fee. He said in cross-examination that the JAM option was never a real option, and its only purpose was to give him standing to claim possession. It is difficult to see how the option could achieve this. In any event, it is clear that it is more than a mere sham option. It is a carefully drawn document, clearly intended to achieve the purpose of providing a success fee.

His evidence in cross-examination was at variance with his evidence in chief that the option agreements were intended to provide an appropriate reward for his efforts, and that the letter for CQPL on 13 October 2000 affirmed the 20% success fees and sets out the basis of his representation.

His fax to NO of 14 December 2000 confirms he was acting on a speculative basis. His Statement of Claim in the District Court proceedings 314 of 2001 claims a 20% success fee. He said in cross-examination, "This is likely to refer to CQPL." His explanation that this was in fact an ambit claim and there was possibly no basis to this claim is not only implausible in its context, but reflects a fundamental ignorance of his obligations as a solicitor.

At page 76 of the transcript he said in relation to his court appearance for CQPL he was to bear CQPL's costs personally on the basis of the arrangement proposed on 18 October 2000 by Mason Siers Turnbull, solicitors for CQPL, and clarifies this by saying, he can have the 20% if he wins.

We find charge 4 proved.

Charge 5 relates to failure to maintain reasonable standards of competence. We make no finding in relation to the correctness of the Registrar of Titles approach in the fixing of boundaries. It is clear that the practitioner has brought a multiplicity of actions for clients based on virtually identical grounds.

His clients have suffered costs orders on an indemnity basis. He has given no good reasons for the bringing of fresh actions.

We find charge 5 proved.

Charge 6 relates to the making of allegations without reasonable grounds. The Practitioner candidly acknowledges that his Statement of Claim in the District Court proceedings was an ambit claim and possibly without basis.

In relation to his action Q7017 of 2000, we can only repeat the comments of Justice Kiefel, who says:

> *He has brought proceedings that have no foundation in law or fact and which involve serious allegations of impropriety.*

His comments in those proceedings that Crown Law deliberately misled the Supreme Court and the Court of Appeal and engaged in deception reflects his general conduct in these proceedings of imputing improper motives to anyone who disagrees with his view of the law. He has been unable to adduce any basis for these allegations.

He has made similar allegations in relation to the Registrar of Titles. Save for the fact that the Registrar disagrees with his view of the law, he has been unable to bring any evidence to support his views.

During the process of the mortgagee sale of his property he made an allegation of a most serious fraud, which allegation has not been substantiated.

The practitioner alleged a scheme between the Trustee in Bankruptcy and the State of Queensland but brought no evidence to support this. He asked us simply to accept the fact that the evidence exists.

We find charge 6 proved.

Penalty

The practitioner has been found guilty of professional misconduct. It is clear that he has become obsessed with the Titles Offices practices in relation to the fixing of boundaries. In the most generous view, this has clouded his appreciation of his professional responsibilities.

In relation to the charges of mixing his affairs with his clients' affairs and charging a contingency fee, we note that the clients all had the benefit of independent legal advice. No such ameliorating factors apply in relation to the other charges or, indeed, his concept of the role of a solicitor.

He has made groundless attacks on the integrity of a range of people and pursued litigation without reasonable basis to the detriment of his clients. Indeed, during the defence of these proceedings he made similar allegations in relation to the Law Society and a Member of the Judiciary.

He appears to have no cognisance of the nature or gravity of his conduct. It is unfortunate that he has not found himself able to be present at the time of the handing down of this decision.

However, it is difficult to see how any submissions by him could affect the decision we feel constrained to hand down. It is clear to us that he is not a fit and proper person to practise as a solicitor. There is no material before us to suggest when and if he would be such a person.