

DISCIPLINARY ACTION REPORT

In the Matter of BERNARD PAUL BESTON

Case No: SCT/12
Date of Hearing: 25 November 1998
Appearing Before: Mr T M Treston (Presiding Member)
Ms C C Endicott (Practitioner Member)
Mr G Campbell-Ryder (Lay Member)
Penalty: Fined \$5,000.00

Charge 1

That the practitioner borrowed money from his clients in breach of Rule 86 of the Queensland Law Society Inc.

Particulars

- (a) On or about 27 August 1993, the practitioner borrowed from Kropp Industries Pty Ltd ("KI") the sum of \$14,000;
- (b) On or about 17 October 1994, by agreement between the practitioner and Noel Kropp (acting on behalf of KI and on behalf of A & B Management (No 52) Pty Ltd as trustee of the Noel Kropp Trust ("the Trust"), the loan referred to in subsequently subparagraph (a) was novated by the substitution of the Trust as lender in lieu of KI;
- (c) At the dates of the transactions referred to in subparagraphs (a) & (b), KI and the Trust were clients of the practitioner and were not members of any of the classes of clients excepted from the operation of Rule 86 of the Rules of the Queensland Law Society.

Charge 2

That the practitioner borrowed money from his clients in breach of Rule 68E of the Rules of the Queensland Law Society (Rule 68E having been in force at the relevant time).

- (a) In or about 1986, the practitioner borrowed from the Trust the sum of \$6,000;
- (b) During 1986, the Trust was a client of the practitioner and was not a member of any of the classes of clients excepted from the operation of Rule 68E of the Rules of the Queensland Law Society.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:

Mr B Bartley, Solicitor of Corrs Chambers Westgarth

(b) For the Practitioner:

Mr R Dickson of Counsel instructed by Messrs Stephens & Tozer Solicitors

Findings and Orders

1. The Tribunal found proved the facts as alleged in the Application of the Queensland Law Society filed on 26 August 1998 and as accepted by the practitioner by his plea of guilty.

The Tribunal finds those facts constitute professional misconduct.

2. The Tribunal imposes a penalty of \$5,000 to cover both of the charges.
3. The Tribunal allows the practitioner a period of 8 months to pay the sum of \$5,000 on the condition that the sum of \$625 be paid on the first day of each month commencing on 1 January 1999,
4. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to this application including the costs of the Clerk to the Solicitors Complaints Tribunal and of the recorder to be assessed or taxed.

Reasons

The reasons for the Tribunals findings are firstly on the evidence and on the practitioner's plea of guilty.

The practitioner has been in breach of Rule 68E in relation to the earlier loan and in breach of Rule 86 in relation to the latter loan.

In relation to penalty, the Tribunal has to discharge the function of imposing a penalty that will sit well with the views of the community and will also constitute a deterrent to practitioners that might be tempted to engage in conduct that comes within the scope of the present Rule 86.

The Tribunal is satisfied that the practitioner borrowed money from a client who was not within the excepted classes of persons and that the person from whom the money was borrowed had not been advised to seek independent advice.