

# In the Matter of Peter Curtis Bevan

**Case Number:** SCT/113  
**Date of Hearing:** 19 November 2003  
**Appearing Before:** Mr P Mullins (Presiding Member/Practitioner Member)  
Mr P Short (Practitioner Member)  
Ms I Vallin-Thorpe (Lay Member)  
**In Attendance:** Mr J W Broadley (Clerk)  
**Penalty:** Fined \$3,000.00

## Charge 1

1. The Solicitor, in breach of his obligations under s16 of the *Trust Accounts Act 1973* ('Act'), failed to provide to the Queensland Law Society Inc ('Society'), on or before 31 May 2002, an auditor's report for the financial period ending 31 March 2002.

### Particulars

- (a) At all material times the Solicitor carried on practice under the name B&G at Level 1, 175 Sturt Street, Townsville, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the Act.
- (c) Pursuant to s16 of the Act, the Solicitor was obliged to give to the Society, as supervising entity, an auditor's report containing the information prescribed by reg23 of the *Trust Accounts Regulation 1999* within two months of the end of the financial period ending 31 March 2002, namely on or before 31 May 2002.
- (d) The Solicitor failed to give the Society the auditor's report until 16 May 2003.

## Charge 2

2. The Solicitor, in breach of his obligations under s16 of the *Trust Accounts Act 1973* ('Act'), failed to provide to the Queensland Law Society Inc ('Society'), on or before 31 May 2003, an auditor's report for the financial period ending 31 March 2003.

### Particulars

- (a) At all material times the Solicitor carried on practice under the name B&G at Level 1, 175 Sturt Street, Townsville, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the Act.
- (c) Pursuant to s16 of the Act, the Solicitor was obliged to give to the Society, as supervising entity, an auditor's report containing the information prescribed by reg23 of the *Trust Accounts Regulation 1999* within two months of the end of the financial period ending 31 March 2003, namely on or before 31 May 2003.
- (d) The Solicitor failed to give the Society the auditor's report until 15 July 2003.

## Charge 3

3. The Solicitor failed to give the Council of the Society an explanation in response to a written Notice dated 24 June 2003 issued pursuant to s5H of the *Queensland Law Society Act* ('Act').

### Particulars

- (a) At all material times, Peter Lyons was:
  - (i) Manager – Legal Investigations, of the Society; and
  - (ii) authorised by the Council of the Society to call upon the Solicitor to give an explanation pursuant to s5G of the Act.
- (b) At all material times, Malcolm Hinton was:
  - (i) General Manager – Legal Investigations, of the Society; and
  - (ii) authorised by the Council of the Society to give a Notice pursuant to s5H of the Act.
- (c) On 28 November 2001, pursuant to his obligations under s16 of the *Trust Accounts Act 1973*, the Solicitor provided the Society with an auditors report for the financial period ending 31 March 2001 ('2001 audit report').
- (d) By letter dated 9 January 2002 relating to the 2001 audit report the Society:
  - (i) sought advice from the Solicitor as to when an outstanding deposit of \$215.46 as at 31 March 2001 was received and the date it was deposited;
  - (ii) asked the Solicitor to advise whether or not two cheques, numbered 558 and 633, that had been unrepresented for more than 15 months, had been written back through the Solicitor's records and either a replacement cheque issued, or enquiries made in relation to the whereabouts of the payees and, if the payee could not be located, whether or not the monies been dealt with under s33 of the *Trust Accounts Act*;
  - (iii) asked the Solicitor to advise whether or not four trust account cheques, mentioned in the Bank Reconciliation Statement as at 31 March 2001 as having been outstanding for more than three months, had been presented;
  - (iv) sought confirmation from the Solicitor that he would regularly review the trust account Bank Reconciliation Statements and take appropriate follow-up action in relation to any cheques that had been outstanding for three months or more.

- (e) By letter dated 31 January 2002, the Society wrote to the Solicitor seeking a response to its letter of 9 January 2002.
- (f) By letter dated 18 February 2002, the Society again wrote to the Solicitor seeking a response to its letter dated 9 January 2002.
- (g) By letter dated 5 March 2002, the Society again wrote to the Solicitor seeking a response to its letter of 9 January 2002.
- (h) On 13 March 2002, during a telephone call from Deborah Lai of the Society, the Solicitor apologised for the delay in replying to the Society's letter of 9 January 2002 and explained that he had been 'flat strapped' and needed to follow up on some of the old files before he could reply, but said that he should 'have something to (QLS) within the week'.
- (i) By letter dated 3 April 2002, the Society again wrote to the Solicitor seeking a response to its letter of 9 January 2002.
- (j) By facsimile dated 16 April 2003, the Society again wrote to the Solicitor seeking a response to its letter dated 9 January 2002.
- (k) By letter dated 12 June 2003, the Council required the Solicitor, pursuant to s5G of the Act, to give an explanation by 23 June 2003 in relation to the matters stipulated therein.
- (l) On 24 June 2003 the Council caused a Notice pursuant to s5H of the Act to be given to the Solicitor in respect of its letter dated 12 June 2003 ('s5H Notice').
- (m) The Solicitor failed to respond to the s5H Notice within 14 days or at all.

## Charge 4

4. The Solicitor, in breach of his obligations to his client, EB, failed to keep EB informed as to the current status of his matter.

### Particulars

- (a) On 14 March 2002, EB consulted the Solicitor, and requested that he act, in relation to a relationship dispute between EB and his former de facto wife, BP.
- (b) During the consultation, EB instructed the Solicitor, and the Solicitor agreed, to send a letter to RNM promptly.
- (c) Twice, prior to 17 June 2002, EB telephoned the Solicitor's office requesting the Solicitor call him back, which the solicitor failed to do.
- (d) By letter dated 17 June 2002 to the Solicitor, EB:
  - (i) requested a copy of the letter the Solicitor sent to RNM;
  - (ii) requested a copy of RNM's response, if any;
  - (iii) requested a receipt for \$1,000 which EB had sent to the Solicitor in respect of his fees.
- (e) By letter dated 14 July 2002 to the Solicitor, EB requested a response to his letter dated 17 June 2002.
- (f) Not until receipt of a letter dated 9 August 2002 from the Solicitor was EB informed that the letter dated 9 August, had been sent to RNM, and a copy of that letter provided to EB pursuant to his request.
- (g) By his failure to respond to EB's communications, referred to in paragraphs 4(c) to 4(e) hereof, until 9 August 2002, the Solicitor breached his obligations under item 4.04 of the Society's Guide to Professional Conduct.

## Charge 5

5. The Solicitor failed to give the Council of the Society an explanation in response to a written Notice dated 18 October 2002 issued pursuant to s5H of the *Queensland Law Society Act* ('Act').

### Particulars

- (a) At all material times, Nicholas Francis Masinello was:
  - (i) the Director of Professional Standards of the Society; and
  - (ii) authorised by the Council of the Society to call upon the Solicitor to give an explanation pursuant to s5G of the Act, and to give a Notice pursuant to s5H of the Act, to the Solicitor on its behalf.
- (b) By letter dated 30 August 2002, the Society wrote to the Solicitor enclosing a copy of a complaint dated 19 August 2002 from EB and requesting explanatory comments within 21 days.
- (c) By letter dated 10 September 2002, the Solicitor responded to the Society offering an explanation of some, but not all, the matters of complaint made by EB in his letter of 19 August 2002.
- (d) By letter dated 18 September 2002, the Society again wrote to the Solicitor advising him that he had failed to address the concerns raised by EB in his letter of 19 August 2002 and specifically asking the Solicitor:
  - (i) what 'steps' he had taken as referred to in item 'July 2002 – telephone attendance upon (EB) advice as to steps taken' referred to in the Solicitor's tax invoice dated 21 August 2002 to EB;
  - (ii) to explain the delay between receipt of his instructions on 14 March 2002 and the sending of the letter to RNM on 9 August 2002;
  - (iii) to respond to matters (i) and (ii) in particular, and to provide a more detailed response to EB's letter of 19 August 2002.

- (e) By letter dated 8 October 2002, the Council required the Solicitor, pursuant to s5G of the Act, to give an explanation by 14 October 2002 as to the matters referred to in the complaint by EB dated 19 August 2002.
- (f) On 18 October 2002, the Council caused a Notice pursuant to s5H of the Act ('s5H Notice') to be given to the Solicitor in respect of its letter dated 8 October 2002.
- (g) On 1 November 2002, the Solicitor wrote to the Society in response to the s5H Notice, but has failed to give an explanation in writing on the matters raised in EB's complaint of 19 August 2002.

## Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr D G Searles, Solicitor of Messrs McCullough Robertson, Solicitors
- (b) For the Practitioner:  
Mr A J MacSporran of Counsel instructed by Messrs Quinn & Scattini, Solicitors
- (c) For the Complainant:  
No appearance on behalf of EB

## Findings and Orders

Upon the undertaking of the Practitioner, through his Counsel, that he will undergo psychological consultations for a further period of 12 months from today, the Tribunal orders as follows:

1. The Tribunal finds the charges, as admitted by the Practitioner, proved and that those charges constitute professional misconduct.
2. The Tribunal finds the Practitioner guilty of professional misconduct.
3. The Tribunal orders that the Practitioner pay a penalty of \$3,000.00 to the Fund.
4. The Tribunal further orders that the Practitioner attend and satisfactorily complete the first available Practice Management module of the Practice Management course through the Queensland Law Society.
5. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated incidental to the application and the costs of the recorder and the Clerk, such costs to be assessed by Monsour Legal Costs Pty Ltd.
6. The Tribunal further orders that the penalty be paid within six months of today and that the costs as assessed be paid within twelve months of today.
7. The Tribunal further orders that the application for compensation by EB be dismissed.

## Reasons

### Findings and Penalty

The practitioner has pleaded guilty to five charges – two of failing to supply a Trust Account Auditor's Report by the due date, one of failure to respond to correspondence from the Queensland Law Society, one of failing to keep a client informed about a client matter and one of failure to give an explanation to the Queensland Law Society when required under s5H.

The delay in furnishing the audit reports was in one instance 12 months and the other instance four months. These are serious matters. They amount to professional misconduct. However, they are at the lower end of the scale of seriousness.

There was no irregularity identified in either of the audit reports. It is common ground that there is nothing irregular about the practitioner's Trust Account.

We should take into account that the practitioner's early plea has minimised expense to the Queensland Law Society.

It is also apparent that the practitioner had a laudable record of pro bono service. He apparently undertook a large amount of Legal Aid work. In fact, it may be said that he undertook too much Legal Aid work. It is common knowledge that fees paid by Legal Aid are meagre and a practitioner who relies to a large extent on income from Legal Aid must be under significant pressures. We were told that he has now reduced the amount of Legal Aid work he undertakes. That is sensible.

At the end of the day, the offences called for a fine. It was common ground that this was the appropriate remedy. The Queensland Law Society submitted that the fine should be in the range of \$5,000 to \$10,000. The practitioner's counsel suggested a slightly lower amount might be appropriate.

We think that the imposition of a monetary impost will serve as a deterrent to other practitioners. That is a protection for the public. However, we would prefer that the practitioner benefit from this payment.

To that end, we think he should be required to undertake satisfactorily the first available Practice Management Module of the Legal Practice Management Course through the Queensland Law Society. That will involve a significant payment by him. If he is required to meet that cost, a slightly lower fine is, in our view, appropriate. We think that he should be fined the sum of \$3,000.

It was submitted that we should order that the practitioner be subject to a practice audit by a senior practitioner at the cost of about \$1,000. We think that the benefit from this would be limited and that the public would be better protected by him undertaking the Practice Management Module of the Practice Management Course.

We've noted the comment made by Ms Leivesley in her report about the benefit the practitioner would derive from ongoing consultation with a psychologist.

## Claim for Compensation

EB made an application for compensation and supported that with a Statutory Declaration dated 30 August, 2003.

Section 6R(4) of the *Queensland Law Society Act* 1952 empowers the Tribunal...

*“... to make a compensation order only if it is satisfied that –*

- (a) a complainant has suffered pecuniary loss because of the practitioner's malpractice, professional misconduct or unprofessional conduct or practice; and*
- (b) the complainant has given notice of a claim for compensation, and particulars of the complainant's loss, to the council or the legal ombudsman”.*

The difficulty for EB in his application is that, in our opinion, the material contained in his Statutory Declaration does not satisfy us that he has suffered pecuniary loss because of the practitioner's established professional misconduct in this matter.

Accordingly, it is appropriate that we dismiss the application, having regard to s6R4(a), and we'll make that order.