

4. The tribunal finds the charges proved and that the charges constitute professional misconduct. The tribunal finds the practitioner guilty of professional misconduct.
5. The tribunal orders that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.
6. The tribunal further orders that the costs of and incidental to this application be paid by Gregory John Casey, those costs to be agreed, and in default of

agreement, as assessed by Monsour Legal Costs Pty Ltd.

Reasons

In making its orders, the tribunal takes into account the correspondence from the practitioner's solicitors acknowledging and consenting to the outcome the tribunal has arrived at. The tribunal also takes into account the nature of the charges and the gross breaches of trust that they reflect.

The Solicitors Complaints Tribunal

In the Matter of Practitioner X

Case No: 41
Date of Hearing: 29 November 2000
Appearing Before: Mr G C Fox (Chairperson)
 Mrs C C Endicott
 Ms D A Wilson (Lay Member)
Penalty: Fined \$9,000.00

Charges

On 29 November 2000 the Solicitors Complaints Tribunal heard charges laid by the Council of the Queensland Law Society by notice of charge dated 18 July 2000 against practitioner X. The practitioner admitted the following charges:

Client A

1. That in breach of Section 5H of the Queensland Law Society Act 1952 (as amended) ("the Act") the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than 14 days after notice was given to him under Section 5H(2) of the Act.

Particulars

- (a) By letter on behalf of the Council to the practitioner dated 23 April 1999, the practitioner was requested to provide, by 21

May 1999, a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint dated 7 April 1999 from Client A to the Council;

- (b) The practitioner did not reply to that letter dated 23 April 1999;
- (c) By letter on behalf of the Council to the practitioner dated 11 May 1999, the practitioner was requested to provide, by 21 May 1999, a sufficient and satisfactory explanation of Client A's complaint dated 7 April 1999 and his further letter dated 4 May 1999;
- (d) The practitioner did not reply to that letter by 21 May 1999;
- (e) By a letter on behalf of the Council to the practitioner dated 25 May 1999, the Council requested a response from the practitioner by 31 May 1999, failing which a Section 5H(2) notice would be served upon him;
- (f) The practitioner did not reply to that letter dated 25 May 1999;
- (g) By notice on behalf of the Council to the practitioner dated 1 June 1999, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that his failure to furnish an explanation

in writing of the matters referred to in the letters dated 23 April 1999, 11 May 1999 and 25 May 1999 was a breach of Section 5H(1) of the Act and that if such failure continued for a period of 14 days after the date of his receipt of such notification he would be liable to be dealt with for professional misconduct unless he had reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period.

(h) The practitioner did not reply to the notice dated 1 June 1999.

2. That the practitioner committed professional misconduct by his neglect and delay in failing to prosecute Client A's claim for damages for defamation against XYZ.

Particulars

(a) In or about 8 May 1995, the practitioner was engaged by Client A to act on his behalf in a claim for defamation against XYZ and to prosecute that action as expeditiously as possible.

(b) In or about April 1997 Client A instructed the practitioner to deliver interrogatories to XYZ.

(c) Despite inquiry by Client A, between April 1997 and March 1999, no interrogatories were delivered by the practitioner to XYZ.

3. That the practitioner committed professional misconduct by informing Client A, contrary to the fact, that interrogatories had been delivered to XYZ, that XYZ had failed to answer those interrogatories, that an application had been filed in the court to obtain an order that the interrogatories be answered and that application had been allocated a hearing date.

Particulars

(a) the practitioner informed Client A that interrogatories were to be delivered to XYZ on 13 February 1998;

(b) On 26 February 1998, the practitioner instructed a member of his staff to inform Client A that answers to interrogatories were due "next week";

(c) On 26 October 1998, Client A paid the practitioner the sum of \$300.00 for the purpose of making application to the court for an order that XYZ answer interrogatories;

(d) On 5 November 1998, the practitioner informed Client A that "next week" application would be made to District Court Chambers for a trial date, order and answers to interrogatories;

(e) On 2 February 1999, the practitioner informed Client A that an application was being made to the court to have XYZ answer interrogatories;

(f) On 15 March 1999, the practitioner told Client A that an application had been filed and that it was returnable "Thursday week";

(g) On 23 March 1999, Client A ascertained from the Brisbane District Court that no step had been taken in the action since 1 July 1998;

(h) On 23 March 1999, the practitioner admitted to Client A that no application had been filed in the court.

Client B

4. That in breach of Section 5H of the Queensland Law Society Act 1952 (as amended) ("the Act") the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than 14 days after notice was given to him under Section 5H(2) of the Act.

Particulars

(a) By letter on behalf of the Council to the practitioner dated 8 July 1999 the practitioner was requested to provide by 30 July 1999 a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint from Client B to the Council;

(b) The practitioner did not reply to that letter dated 8 July 1999;

(c) By letter on behalf of the Council to the practitioner dated 3 September 1999, the Council requested a response from the practitioner by 10 September 1999 failing which a notice pursuant to Section 5H would be issued;

(d) The practitioner did not reply to that letter dated 3 September 1999;

(e) By notice on behalf of the Council to the practitioner dated 28 September 1999, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters

referred to in the letters dated 8 July 1999 and 3 September 1999 was a breach of Section 5H(1) of the Act and that if such failure continued for a period of 14 days after the date of his receipt of such notification he would be liable to be dealt with for professional misconduct unless he had reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period;

- (f) The practitioner did not reply to the notice dated 28 September 1999.

5. That the practitioner committed professional misconduct by his gross neglect and delay in failing to prosecute a claim for damages for personal injuries by Client B against DEF arising out of an incident in which Client B was involved and in which he was injured on 20 June 1984.

Particulars

- (a) In the course of Client B's employ with the DEF, he was injured on 20 June 1984 when a tree fell on him. As a consequence of that incident, Client B sustained a fractured skull and fractured vertebrae;
- (b) In or about late 1984 Client B engaged the practitioner's firm to act on his behalf in a personal injuries claim against the DEF.
- (c) In or about 1987, the practitioner assumed conduct of Client B's action for damages;
- (d) The steps taken in Client B's action were:
- writ filed 9.2.87
 - entry of appearance filed 6.3.87
 - statement of claim delivered on or about 28.3.87
 - defence delivered on or about 19.10.87
- (e) The practitioner took no step in the action for a period of some 12 years between 1987 and 1999 when the practitioner ceased to act for Client B.
- (f) As a consequence of the practitioner's failure to prosecute the action after 1987, Client B was obliged to make application for leave to proceed in the action;
- (g) The application for leave to proceed in the action was heard on 20 March 2000 by Justice M of the Supreme Court;

- (h) On 30 March 2000 Justice M gave judgement and dismissed Client B's application for leave to proceed;

- (i) Client B has lost the right to proceed with his action.

6. That the practitioner committed professional misconduct by informing Client B contrary to the fact, that his action was progressing.

Particulars

- (a) On diverse occasions between 1987 and 1999 when Client B contacted the practitioner to ascertain progress in his action, he was informed that his action was progressing;
- (b) On diverse occasions between 1987 and 1999 when Client B arranged for his wife to contact the practitioner to ascertain progress, she was informed that Client B's action was progressing.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Ms J A Schafer, solicitor, Thynne & Macartney solicitors.
- (b) For the practitioner:
Ian Dearden, Dearden Lawyers.

Findings and Orders

1. The tribunal ordered that the Council of the Queensland Law Society Incorporated be granted leave to amend the notice of charge by adding at the foot of the notice of charge the following words:
- The Council alleges that the charges constitute malpractice, professional misconduct or unprofessional conduct or practice and in the event of such charges being proved to the satisfaction of the tribunal seeks an order that his name be struck off the Roll of Solicitors of the Supreme Court of Queensland or that he be suspended from practice or such other order as the tribunal may make pursuant to the Queensland Law Society Act 1952.
2. The tribunal found the charges proved. The tribunal found the charges taken as a whole amounted to professional misconduct and found the practitioner guilty of professional misconduct.
3. On the practitioner's undertakings:
- (a) That he attend the next available practice management course approved by the

Queensland Law Society Incorporated and complete it to the satisfaction of the Society;

- (b) That he attend for psychiatric counselling and treatment with a qualified psychiatrist unless and until the Society accepts that such psychiatric counselling or treatment is no longer necessary and to provide the Society with such reports, at the practitioner's cost, as the Society may require in relation to the treatment; and
 - (c) To pay the amount of \$1,647.25 for which an account has been provided by Client A, within two months of this order and to pay the balance amount, namely \$5,000.00 within two months of that account for C solicitors being provided by Client A to the practitioner or his solicitor;
 - (d) The tribunal ordered that the practitioner pay a penalty of \$9,000.00.
4. The tribunal further ordered that the practitioner, at his expense, permit an appointee of the society to attend at his practice and undertake an inspection and examination of the practitioner's files, records and office systems and to report any matters requiring remedial action to the practitioner and to the society, such inspections and examinations to take place on a six monthly basis for the next two years.
 5. The tribunal ordered that the penalty be paid over the next nine months, by the amount of \$3,000.00 every three months.
 6. The tribunal further ordered that the practitioner pay the costs of the Council of Queensland Law Society

Incorporated of and incidental to this application to be agreed or, failing agreement, to be fixed as assessed by L costs assessors.

Reasons

The charges were admitted. It was conceded properly that some of the charges at least amounted to professional misconduct.

By way of explanation, the tribunal was referred to a report of Dr C. The report was not challenged by the society. Dr C was of the opinion that the practitioner's conduct was due to an illness involving failure to cope and resulting in a paralysis of action in professional matters. Dr C said that he is now fit to practise with treatment. Dr C's views were consistent with the practitioner's extremely unfortunate personal and professional circumstances, the circumstances not of his making and continuing over some years. Since charged, he pleaded guilty with the full admission of facts, with expressed remorse and apologies.

At the end of the day, however, he lied to his clients and caused them prejudice by way of delay, and no doubt additional costs. The tribunal accepted that the protective jurisdiction of the tribunal required a deterrent penalty. In view of Dr C's report, the tribunal did not regard suspension as appropriate.

The tribunal also took into account the likely destruction of his practice that may result and the effect on his creditors and staff.

The tribunal relied upon the undertakings which had been proffered by the practitioner.