

In the Matter of Practitioner X

Case No: SCT/13
Date of Hearing: 27 July 1999
Appearing Before: Mr J S P O’Keeffe (Chairperson)
Mr G A Murphy
Ms D A Wilson (Lay Member)
Penalty: Fined \$2,500.00

Charges

On or about 14 June 1996, practitioner X borrowed \$15,000.00 from a client, JS, in breach of Queensland Law Society Rule 86.

Particulars

1. At all material times, the practitioner acted for JS (the client).
2. On or about 14 June 1996, the practitioner borrowed \$15,000.00 from the client as is evidenced by a loan agreement dated 13 June 1996 and cheque number 002743 drawn on the practitioner’s general trust account with Bank of Queensland Limited.
3. At the time of the loan, the client was not one of the class of clients referred to in Rule 86 of the Queensland Law Society Rules from whom such a borrowing would have been permissible and as a consequence, the loan transaction breached Rule 86.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D G Searles, solicitor of McCullough Robertson, solicitors.
- (b) For the practitioner:
Mr B P Ryan, solicitor of Ryan & Bosscher, solicitors.

Findings and Orders

1. The Tribunal finds the practitioner guilty of professional misconduct.

2. The Tribunal orders the imposition of a penalty of \$2,500.00.
3. The Tribunal orders the practitioner to pay the costs of the Queensland Law Society Incorporated including the costs incurred in respect of the adjourned hearing on 29 June 1999.
4. The Tribunal directs, pursuant to Section 6U of the Queensland Law Society Act that costs be assessed by Mr Fred Monsour, a costs assessor, and by consent, orders that the costs so assessed be accepted by both parties.
5. By consent, the Tribunal orders that the penalty of \$2,500.00 be paid by eight equal calendar monthly instalments of \$312.50 per month commencing on 27 August 1999.
6. With respect to costs, the Tribunal orders that costs as assessed likewise be paid by eight equal calendar monthly instalments, the first payment of which shall be due and payable on 27 April 2000.
7. With respect to both payment of the penalty and the costs, the Tribunal orders that if there is a default in the payment of any of the monthly instalments, if that default continues for a period of twenty-one (21) days without the parties agreeing to an extension of time for payment, then the balance of the penalty and/or costs as the case may be shall become immediately due and payable.

Reasons

The practitioner, through Mr Ryan, admitted the allegations. The practitioner pleaded guilty to the charge. The practitioner accepted the particulars supporting the charge and pleaded guilty to professional misconduct.

The Tribunal took into consideration that the practitioner recommended to JS that JS seek independent legal advice on the loan transaction and the resulting loan agreement, but JS declined to do so. However, this does not excuse the practitioner for failure to comply with Rule 86, which was admitted by the practitioner.