

## In the Matter of Daryl Kingsley Clark Smith

**Case No:** SCT/65  
**Date of Hearing:** 12 March & 7 May 2002  
**Appearing Before:** Ms CC Endicott (Chairperson)  
Mr PM Conroy  
Dr J Lamont (Lay Member)

### Charges

The practitioner was guilty of serious neglect and delay.

The practitioner was guilty of a failure to maintain reasonable standards of competence or diligence in that he failed to keep his client informed of the progress of the actions.

The practitioner misled the Supreme Court of Queensland, the defendants and their solicitors in taking steps in the action which would usually require his client's instructions in circumstances where he did not seek or obtain those instructions from his client.

### Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr D G Searles, solicitor of McCullough Robertson Lawyers
- (b) For the practitioner:  
Mr I D Dearden, solicitor of Dearden Lawyers

### Findings and Orders

1. The tribunal found the practitioner guilty of professional misconduct and unprofessional conduct within s3B of the *Queensland Law Society Act*.
2. Upon the practitioner's undertaking to the tribunal to attend the next available Practice Management Course and successfully complete it, the following orders were made:
  - (a) The practitioner be fined \$10,000 payable by equal quarterly instalments over 12 months;
  - (b) At his own expense, the practitioner permit an appointee of the Queensland Law Society to inspect his files and office systems and to report to the Queensland

Law Society on a 6 monthly basis for the next 2 years;

- (c) The practitioner pay the costs of the Queensland Law Society of and incidental to the application, including the costs of the clerk to the tribunal and the recorder, such costs to be assessed by Monsour Legal Costs Pty Ltd and payable by equal quarterly instalments over 18 months from the date of the assessment;
- (d) Compensation be paid to the complainant in an amount to be assessed by Monsour Legal Costs Pty Ltd, such amount to be paid within 3 months from the assessment.

### Reasons

The practitioner has been charged with three counts of misconduct, including a charge of misleading the Supreme Court, arising from the practitioner agreeing to act for W in July 1992 in a personal injuries action for a work injury and in an action against his former solicitors, who are alleged to be guilty of professional negligence in the handling of the personal injury action on behalf of W.

The practitioner agreed to act when he was approached by AB of counsel, who had been briefed in the personal injury action prior to July 1992. AB was a friend of the practitioner and was extensively used by the practitioner as counsel in litigation matters.

The practitioner was assured that AB of counsel would be available to provide intensive assistance throughout the conduct of the matters and, on that assurance, the plaintiff accepted the instructions and heavily relied.

Unfortunately, he was let down by AB, who was mostly unable to be contacted by the practitioner whenever he tried to seek his assistance in the progress of these matters. This lack of assistance by AB resulted in great delays in the progress of the actions, details of which are set out in the practitioner's lengthy affidavit sworn 2 May 2002. This affidavit was not contested by the Queensland Law Society.

The practitioner entered a plea of guilty to the three charges and conceded that he had an obligation as a solicitor to bring an independent mind to the matters and to properly conduct the actions on behalf of W. He concedes he failed to do so and concedes that his

## The Solicitors Complaints Tribunal

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reliance on counsel was an explanation but no justification for his conduct.

The delays of the practitioner resulted in the actions being dismissed and resulted in these present charges being brought by the Queensland Law Society.

The conduct, which is the subject of these charges, is a mixture of unprofessional conduct as defined in s3(B) of the *Queensland Law Society Act 1952* and professional misconduct, especially in respect of charge 3.

The conduct of the practitioner is of a serious nature, but not such as to warrant the practitioner's name being struck from the Roll of Solicitors.

The tribunal has accepted the matters deposed in the three affidavits of the practitioner and in the affidavit and report of Dr C by way of mitigation.

The tribunal recognises that the plaintiff acknowledged his professional shortcomings, expressed remorse for his conduct and its impact on W and entered an early plea of guilty to all these charges.

The tribunal has had the benefit of reading the bundle of references, which are exhibit 2, which were extensive and demonstrate that the practitioner was and is a person of good professional repute and he appears to otherwise attend to his professional duties diligently and competently.

For these reasons, the tribunal finds that the practitioner is a fit and proper person to practise as a solicitor in Queensland.

The tribunal finds that a substantial monetary penalty is called for as a deterrent and as a proper punishment for this conduct.

The tribunal notes that the practitioner will have to pay a substantial insurance deductible of \$22,500 referred to in paragraph 92 of his affidavit and will also be required to pay the costs of these proceedings.

The tribunal has also been asked to consider a claim for compensation by W as set out in his affidavit and his complaint to the society. W attached to his complaint, dated 11 March 2002, details of his claim for compensation. W has instructed BM to act as his solicitor in the resolution of his actions and of this complaint.

The tribunal accepts that W incurred legal costs in doing so which could not be quantified on the material before the tribunal today.

The tribunal is satisfied that the complainant, W, has suffered pecuniary loss because of the practitioner's professional conduct and unprofessional conduct and that W is entitled to an order for compensation under the *Queensland Law Society Act 1952*.

Instead of inconveniencing W and having him attend to further particularise the amount of his loss and to avoid W thereby incurring further legal costs, the tribunal orders:

That the costs that W has not recovered on an indemnity basis from his actions and from matters involving this complaint, not exceeding \$7,000, be assessed by Monsour Legal Costs Pty Ltd and paid by the practitioner within three months of the assessment issuing to W.