

In the Matter of Norman Hugh Davis

Case Number: SCT/92
Date of Hearing: 25 August 2003
Appearing Before: Mr G Fox (Presiding Member/Practitioner Member)
Mr P Short (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Suspended from practice for a period of one year, from 8 September 2003

Charge 1

1. The Solicitor, in breach of his obligations under s16 of the *Trust Accounts Act 1973*, failed to provide to the Queensland Law Society Inc an auditor's report for the financial period ending 31 March 2001, on or before 31 May 2001.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the *Trust Accounts Act 1973 (Act)*.
- (c) Pursuant to s16 of the Act, the Solicitor was obliged to give to Queensland Law Society Inc (Society) as supervising entity, an auditor's report containing the information prescribed by regulation 23 of the *Trust Account Regulation 1999* within two months of the end of the financial period ending 31 March 2001, namely on or before 31 May 2001.
- (d) Notwithstanding his said obligation, the Solicitor failed to give the Society the said auditor's report by 31 May 2001 or at all.

Charge 2

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

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the *Trust Accounts Act 1973 (Act)*.
- (c) Pursuant to s16 of the Act, the Solicitor was obliged to give to Queensland Law Society Inc (Society) as supervising entity, an auditor's report containing the information prescribed by regulation 23 of the *Trust Account Regulation 1999* within two months of the end of the financial period ending 31 March 2002, namely on or before 31 May 2002.
- (d) Notwithstanding his said obligation, the Solicitor failed to give the Society the said auditor's report by 31 May 2002 or at all.

Charge 3

3. The Solicitor, in breach of regulation 3 of the *Legal Practitioners Regulation 1996* failed to give to the Queensland Law Society Inc, a certificate in the approved form about his compliance with s51(2) of the *Legal Practitioners Act 1995* on or before 14 June 2001.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the *Trust Accounts Act 1973 (Act)*.
- (c) Pursuant to regulation 3 of the *Legal Practitioners Regulation 1996 (Regulation)*, the Solicitor was obliged to give to the Society, as supervising entity, a certificate in the approved form about his compliance with s51(2) of the *Legal Practitioners Act 1995* for the financial period ending 31 March 2001.
- (d) The time within which the Solicitor was to give to the Society the said certificate was, under regulation 3(3), within fourteen days after the time within which the Solicitor must give to the Society, as supervising entity, an auditor's report under s16(1)(b) of the Act for the financial period ending 31 March 2001, which was 31 May 2001. That meant that the said certificate was due to be given to the Society on or before 14 June 2001.
- (e) Notwithstanding his said obligation, the Solicitor failed to give to the Society the said certificate on or before 14 June 2001 or at all.

Charge 4

4. The Solicitor, in breach of regulation 3 of the *Legal Practitioners Regulation 1996 (Regulation)* failed to give to the Queensland Law Society Inc (Society), a certificate in the approved form about his compliance with s51(2) of the *Legal Practitioners Act 1995* on or before 14 June 2002.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the *Trust Accounts Act 1973 (Act)*.

- (c) Pursuant to regulation 3 of the *Legal Practitioners Regulation* 1996 (Regulation), the solicitor was obliged to give to the Society, as supervising entity, a certificate in the approved form about his compliance with s51(2) of the *Legal Practitioners Act* 1995 for the financial period ending 31 March 2002.
- (d) The time within which the Solicitor was to give the Society the said certificate was, under regulation 3(3), within fourteen days after the time within which the Solicitor must give to the Society, as supervising entity, an auditor's report under s16(1)(b) of the Act for the financial period ending 31 March 2002, which was 31 May 2002. That meant that the said certificate was due to be given to the Society on or before 14 June 2002.
- (e) Notwithstanding his said obligation, the Solicitor failed to give the Society the said certificate on or before 14 June 2002 or at all.

Charge 5

- 5. Between August 2001 and 19 March 2002 the Solicitor failed to keep proper records of all trust monies as required by s6 of the Act and the *Trust Accounts Regulations* 1999.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the *Trust Accounts Act* 1973 (Act).
- (c) Contrary to his obligation under regulation 11 of the *Trust Accounts Regulations* 1999, the Solicitor failed to write up his Trust Account Cashbook for the period August 2001 to 19 March 2002.
- (d) Contrary to his obligations under regulation 12(1) of the *Trust Accounts Regulations* 1999, the Solicitor failed to complete monthly trust reconciliations for the period February 2001 to February 2002.
- (e) Contrary to his obligations under regulation 6 of the *Trust Accounts Regulations* 1999, the Solicitor failed to issue trust receipts for the following trust funds banked:

Date	Amount	Purpose
24/4/01	\$203.00	On account of outlays
4/7/01	\$13.53	Solicitor's general account cheque for restoration of overdrawn trust ledger account

Charge 6

- 6. On 2 April 2001, when acting for one M in a purchase from G, the Solicitor caused a cheque for \$416.00 to be drawn on his client's individual trust ledger account and paid into his general account when, at the time, there were insufficient funds in the account to meet the cheque, resulting in the trust ledger account being overdrawn \$416.00.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland and acted for one M in a purchase from G.
- (b) As at 2 April 2001, there were no funds standing to the credit of the client's individual trust ledger account and on that day, the Solicitor caused to be transferred from that account to his general account, the sum of \$416.00 on account of costs resulting in the client's individual trust ledger account being overdrawn by \$416.00.
- (c) As at 21 March 2002, the Solicitor had not restored the trust deficiency resulting in a benefit to him of client trust funds of \$416.00 for a period of thirteen days short of twelve months.

Charge 7

- 7. On or about 15 June 2001 when acting for one S in a purchase from Y, the Solicitor caused a cheque for \$17.60 to be drawn on his client's individual trust ledger account and paid to the DoT when, at the time, there were insufficient funds in the account to meet the cheque resulting in the trust ledger account being overdrawn \$13.53.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland and at all material times acted for one S in the purchase from Y.
- (b) As at 15 June 2001, there was \$4.07 standing to the credit of the client's individual trust ledger account and on that day the Solicitor caused to be paid from that said account to the DoT the sum of \$17.60 resulting in the trust ledger account being overdrawn by \$13.53.
- (c) The deficiency of \$13.53 was restored by the Solicitor 19 days later on 4 July 2001.

Charge 8

- 8. Between 5 September 2001 to the date of this Notice of Charge, the Solicitor failed to adequately respond to correspondence from the Society.

Particulars

- (a) The Solicitor, in breach of his obligations under s16 of the *Trust Accounts Act* 1973, failed to provide to Queensland Law Society Inc an auditor's report for the financial period ending 31 March 2001, on or before 31 May 2001.

- (b) By letter dated 5 September 2001, the Society wrote to the Solicitor seeking his audit report under s16 of the Act which was due on 31 May 2001 and his audit certificate which was due to be lodged on or before 14 June 2001 under regulation 3 of the Regulations. The Solicitor did not reply to that letter.
- (c) By further letter dated 4 October 2001, the Society wrote again to the Solicitor seeking a response to its letter of 5 September 2001. The Solicitor did not reply to that letter.
- (d) By further letter dated 24 October 2001, the Society wrote again to the Solicitor seeking a response to its earlier letters of 5 September 2001 and 4 October 2001. The Solicitor did not reply to that letter.
- (e) On 29 October 2001, the Solicitor telephoned Ms Debra Lai of the Society confirming, *inter alia*, that he would ring her on Friday 2 November 2001 to confirm that he had submitted his books to his auditor. He did not telephone the Society on 2 November 2001.
- (f) On 13 November 2001, Ms Lai telephoned the Solicitor who told her he would follow up with his auditor that day or the following day.
- (g) On 20 November 2001, the Solicitor rang Ms Lai and informed her, *inter alia*, that he would be taking his books to his auditor and would write to the Society once he confirmed with his auditor when he would receive the audit report for the period 31 March 2001.
- (h) Not having heard from the Solicitor, the Society again wrote to him by letter date 18 January 2002 seeking a response to earlier correspondence. The Solicitor did not reply to that letter.
- (i) By further letter date 12 February 2002, the Society again wrote to the Solicitor and by letter dated 22 February 2002, the Solicitor replied advising, *inter alia*, that his auditor would not be able to start the audit before March 2002 but would finish it by 14 March 2002.
- (j) Not having received the audit report by 14 March 2002, the Society again wrote to the Solicitor by letter dated 4 April 2002 asking for the report. The Solicitor did not respond.
- (k) On 19 March and 21 March 2002, Mr Grenville Hughes, a Society auditor, conducted an audit of the Solicitor's trust account and by letter dated 29 April 2002, a copy of his s31 examination report was forwarded by the Society to the Solicitor seeking his comments in relation to the matters dealt with in the report. The Solicitor did not reply to that letter.
- (l) By further letter dated 15 May 2002, the Society again wrote to the Solicitor seeking a response to its letter of 29 April 2002. The Solicitor did not reply to that letter.
- (m) On 23 May 2002, the Solicitor rang Mr David Franklin, Manager of Audits of the Society and advised him that the Society could expect a response to the s31 report that day or within the next day or two. No response was received by the Society.
- (n) By further letter dated 12 June 2002, the Society wrote to the Solicitor seeking his response to the s31 report and advising that the matter was to be referred to the Professional Standards Committee at its meeting on 25 July 2002. The Solicitor did not reply to that letter.
- (o) By further letter dated 18 June 2002, the Society again wrote to the Solicitor advising that his audit report and audit certificate for the period ended 31 March 2002 were due on 31 May 2002 and 14 June 2002 respectively and sought the lodgment of both in 28 days. The Solicitor did not respond to that letter.
- (p) By further letter dated 25 June 2002, the Society again wrote to the Solicitor seeking a reply to earlier correspondence. The Solicitor did not reply to that letter.

Charge 9 – MKS & DGS

9. The Solicitor, after being called upon by Notice in writing dated 31 October 2002 under the hand of the Director of Professional Standards of Queensland Law Society issued pursuant to s5H(2) of *Queensland Law Society Act 1952* to provide an explanation in writing of the matters, the subject of the correspondence therein set out, within 14 days of the date of receipt of the Notice by the Solicitor, failed to provide an explanation

Particulars

- (a) At all material times the Solicitor carried on legal practice as D&C, 23 Gregory Street, Bowen, Queensland and acted for MKS and DGS in relation to a claim for personal injuries arising out of a motor vehicle accident on 6 September 1996.
- (b) By letter dated 13 August 2002 MSS forwarded on behalf of MKS & DGS a written complaint by them about the Solicitor dated 29 July 2002 to the Queensland Law Society ("the Society") which letter and complaint the Society received on 15 August 2002.
- (c) By letter dated 16 August 2002 the Society sent a copy of the said letter and complaint to the Solicitor seeking an explanation.
- (d) No reply having been received by the Society from the Solicitor to its letter dated 16 August 2002, the Society again wrote to the Solicitor by letter dated 17 September 2002 seeking a reply to its letter of 16 August 2002 within 14 days of 17 September.
- (e) No reply having been received by the Solicitor to the Society's letter dated 17 September 2002, the Society again wrote to the Solicitor by letter dated 16 October 2002 requesting a sufficient and satisfactory written explanation of the matters referred to in the complaint no later than 30 October 2002 advising that should the Solicitor fail to provide an explanation, a Notice under the provisions of s5H(2) of the *Queensland Law Society Act 1952* would be issued.

- (f) No reply having been received from the Solicitor to the Society's letter of 16 October 2002, on 31 October 2002 the Society forwarded to the Solicitor by ordinary pre-paid post addressed to him at his place of business and by facsimile transmission to his then current facsimile number, a Notice under s5H(2) of the *Queensland Law Society Act* 1952 under the hand of the Director of Professional Standards of the Society. That Notice advised the Solicitor that if his failure to give an explanation in writing of the matters referred to in the complaint of MSS on behalf of MKS & DGS dated 13 August 2002 continued for a period of 14 days after the date of his receipt of the Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not complying with the said Notice.
- (g) No response to the said Notice has been received by the Society.

Charge 10 – LJO

10. The Solicitor, after being called upon by Notice in writing dated 1 November 2002 under the hand of the Director of Professional Standards of Queensland Law Society issued pursuant to s5H(2) of the *Queensland Law Society Act* 1952 to provide an explanation in writing of the matters the subject of the correspondence therein set out, within 14 days of the date of receipt of the Notice by the Solicitor, failed to provide an explanation.

Particulars

- (a) At all material times the Solicitor carried on legal practice as D&C Solicitors at 23 Gregory Street, Bowen, Queensland and acted for LJO in a claim for damages for personal injuries arising out of a work related accident in September 1994.
- (b) By letter dated 6 August 2001, MSS on behalf of LJO forwarded to Queensland Law Society ('the Society') a written complaint by LJO about the Solicitor dated 3 August 2001 which letter and complaint were received by the Society on 6 August 2001.
- (c) By letter dated 10 August 2001, the Society sent a copy of the MSS letter enclosing the complaint to the Solicitor and requested an explanation.
- (d) No reply having been received by the Society from the Solicitor to its letter dated 10 August 2001, the Society again wrote to the Solicitor by letter dated 29 August 2001 seeking a reply to its letter of 10 August 2001 within 14 days from 29 August 2001, namely by 12 September 2001.
- (e) By handwritten facsimile dated 12 September 2001 the Solicitor responded to the Society.
- (f) By further letter from MSS on behalf of LJO dated 19 September 2002 to the Society, that firm sent a further written complaint by LJO about the Solicitor dated 16 September 2002 which letter and complaint the Society received on 20 September 2002.
- (g) By letter dated 26 September 2002 the Society sent a copy of the MSS letter of 19 September enclosing the complaint to the Solicitor and requested that he provide a sufficient and satisfactory explanation referred to in the complaint by 18 October 2002.
- (h) No reply having been received by the Society to the Solicitor to its letter dated 26 September 2002, the Society again wrote to the Solicitor by letter dated 22 October 2002, seeking a response to its letter of 26 September 2002 by 5.00pm Thursday 31 October 2002 advising that in the absence of a response, the Society would have no alternative but to issue a Notice pursuant to s5H of the *Queensland Law Society Act* 1952.
- (i) No reply having been received from the Solicitor to the Society's letter of 22 October 2002, on 1 November 2002, the Society forwarded to the Solicitor by ordinary pre-paid post addressed to him at his place of business and by facsimile transmission to his then current facsimile number a Notice under s5H(2) of the *Queensland Law Society Act* 1952 under the hand of the Director of Professional Standards of the Society. That Notice advised the practitioner that if his failure to give an explanation in writing of the matters referred to in the complaint of MSS on behalf of LJO dated 19 September 2002 continued for a period of 14 days after the date of his receipt of the Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not complying with the said Notice.
- (j) No response to the said Notice has been received by the Society.

Charge 11

11. When acting for LJO in Bowen District Court action number 18 of 1997, the solicitor was guilty of serious neglect and undue delay.

Particulars

- (a) At all material times the solicitor was the principal of D&C, of 23 Gregory Street, Bowen, Queensland and acted for LJO (the client), the plaintiff in Bowen District Court action 19 of 1997.
- (b) Schedule 'A' is a Chronology of activity on the Solicitor's file.
- (c) The Solicitor was guilty of serious neglect and undue delay.

Charge 12 – SJN & DMN

12. The Solicitor, after being called upon by Notice in writing dated 16 April 2003 under the hand of the General Manager, Legal Investigations and Prosecutions of Queensland Law Society, issued pursuant to s5H(2) of the *Queensland Law Society Act* 1952 to provide an explanation in writing of the matters the subject of the correspondence set out therein within 14 days of the date of receipt of the Notice by the Solicitor, failed to provide an explanation.

Particulars

- (a) At all material times, the Solicitor carried on practice under the name D&C at 23 Gregory Street, Bowen, Queensland and acted for SJN, the sole executor of the estate of JJT deceased.
- (b) By letter dated 3 March 2003, SJN and his wife DMN, forwarded to Queensland Law Society ('the Society') a written complaint about the Solicitor which complaint was received by the Society on 10 March 2003.
- (c) By letter dated 17 March 2003, the Society sent a copy of the client letter of complaint to the Solicitor requesting a sufficient and satisfactory written explanation of the matters referred to in the complaint by 31 March 2003.
- (d) No reply having been received by the Society from the Solicitor to its letter dated 17 March 2003, on 16 April 2003, the Society forwarded to the Solicitor by ordinary pre-paid post addressed to him at his place of business a Notice under s5H(2) of the *Queensland Law Society Act* 1952 under the hand of the General Manager, Legal Investigations and Prosecutions of the Society. That Notice advised the Solicitor that if he failed to give an explanation in writing of the matters referred to in the complaint dated 3 March 2003, continued for a period of 14 days after the date of his receipt of the Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not complying with the said Notice.
- (e) No response to the said Notice has been received by the Society and by letter dated 1 May 2003, the Society again wrote to the Solicitor noting that the said Notice had not been complied with and suggested that the Notice be complied with. No response was received by the Society to that letter.

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 I Dearden, Solicitor of Dearden Lawyers
- (c) For the Complainant:
There was no appearance on behalf of the Complainant, LJO

Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to file a Further Amended Notice of Charge dated 19 August 2003.
2. The Tribunal finds the matters set out in the Further Amended Notice of Charge dated 19 August 2003, as admitted, proved. The Tribunal finds the practitioner guilty of those charges and that those charges constitute professional misconduct.
3. The Tribunal orders that the practitioner be suspended from practice for a period of one year.
4. The Tribunal further orders that the practitioner not be permitted to resume practice until the Queensland Law Society receives a report from Dr C, or another psychiatrist approved by the Society, that the practitioner is fit to return to practice.
5. The Tribunal further orders that the operation of the suspension commence on 8 September 2003 to enable the practitioner to close down his practice.
6. The Tribunal further orders that the practitioner not undertake any legal work, not open any new files nor accept any instructions in any matters between 25 August 2003 and 8 September 2003.
7. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated together with the costs of the recorder and the Clerk, in relation to all appearances in this matter to be assessed by Monsour Legal Costs Pty Ltd.
8. The Tribunal allows the practitioner twelve months from today's date to pay the costs as ordered.
9. The Tribunal orders that the claim for compensation of LJO be dismissed.

Reasons

The charges before us concern a failure to provide audit reports to the Law Society, a failure to provide Certificates of Compliance under the *Legal Practitioners Act*, a failure to keep proper Trust Account records, two minor charges of overdrawing the Trust Account, a failure to respond to correspondence from the Law Society and a failure to comply with Notices under s5H(2) of the *Queensland Law Society Act*.

The charges are admitted. We find the charges proved. We find the practitioner guilty of professional misconduct.

There is no element of dishonesty in the offences. The practitioner has had a productive life providing a necessary service to his community. It is obvious that he has suffered a massive inability in recent years to deal with pressures of practice. This is entirely consistent with Dr C's report and his demeanour before this Tribunal.

The function of this Tribunal is primarily protective of the interests of the public. We feel that duty will be adequately satisfied by the order we propose to make.

Claim for Compensation

No sufficient evidence has been provided to the Tribunal to enable it to reach a conclusion that the complainant has suffered pecuniary loss as a result of the misconduct in these proceedings and accordingly, the claim for compensation is rejected.