

In the Matter of David Fisher

Case Number: SCT/62

Date of Hearing: 26 June 2002

Appearing Before: Mr P J Mullins (Presiding Member/
Practitioner Member)

Mr M Byron (Practitioner Member)

Dr J Lamont (Lay Member)

Penalty: Not to be employed

Charges

That the employee is guilty of misconduct or default in relation to a practitioner's practice.

Particulars

The employee:

1. The MW Practice:

- (a) Knowingly and falsely informed PT ("the practitioner T") of MW ("the MW practice") that he was enrolled in the Barristers Board Course and that he was undertaking studies and examinations with the Barristers' Board;
- (b) Knowingly and falsely informed the practitioner T that he was engaged in the business of the MW practice, when he was not so engaged;
- (c) Without the knowledge or consent of the MW practice filed court documents using the name of the practice in a claim made against the employee;
- (d) In or about February 2000, without the knowledge or consent of the MW practice signed court documents in the name of the firm;
- (e) In or about 1998 and in the first half of the 2000 calendar year pretended to be or took or used a title implying that he was duly qualified to act as a legal practitioner.

2. The W Practice:

- (a) When seeking employment with GW&A, ("the W practice"), relied upon a reference apparently given by the practitioner T when he knew that the practitioner T had not provided such a reference to him or on his behalf;
- (b) Knowingly and falsely informed GAW ("the practitioner W") of the W practice that he was enrolled in the Barristers Board Course and that he was undertaking and passing examinations set by the Board;
- (c) Signed mail on behalf of the W practice when the practitioner W had instructed him not to do so.

3. The WR Practice:

- (a) When seeking employment with WR, ("the WR practice"), relied upon a curriculum vitae stating that at the date of the application for employment viz 16 July 2001, he was employed by the W practice, when he knew that was false, his employment with the W practice having been terminated in April 2001;
- (b) Knowingly and falsely informed BR ("the practitioner R") of the WR practice that he was undertaking the Barristers Board Course and that he would be admitted as a barrister at the end of 2001.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:

Ms J A Schafer, Solicitor of Messrs Dibbs Barker Gosling

(b) For the Employee:

No appearance on behalf of the Employee

Findings and Orders

1. The Tribunal is satisfied that the Order for Substituted Service of the Notice of Charge has been complied with and the Tribunal is reasonably satisfied that the Employee has been made aware of today's hearing.
2. The Tribunal finds all of the particulars set out in the Notice of Charge dated 30 October 2001 proved and that the matters set out in the Notice of Charge amount to misconduct in relation to a solicitor's practice.
3. The Tribunal orders that on and from 26 June 2002, a person must not employ the employee in relation to a practitioner's practice.
4. The Tribunal further orders that the costs of the Queensland Law Society Incorporated in these proceedings, including the costs of the Application for Substituted Service which were earlier reserved, and including the costs of the recorder and the Clerk, be assessed by Monsour Legal Costs Pty Ltd and that the employee pay those costs as assessed.

Reasons

On 14 May 2002 the Tribunal ordered Substituted Service of the Notice of Charge on the employee by:

- (a) publication of a notice in the Australian newspaper; and
- (b) by the solicitor for the Queensland Law Society using her best endeavours to contact the employee by his mobile phone.

Ms Schafer's Affidavit of 3 June 2002 deposes to publication of the advertisement, as well as the fact that she left a message for the employee on his mobile phone on 15 May 2002, notifying him of the date and time hearing on 26 June 2002. The Affidavit also deposes to the fact that Ms Schafer left a further message for the

employee on the mobile phone on 20 May 2002, drawing his attention to the advertisement published the same day in the Australian. The Tribunal is satisfied that the Order for Substituted Service of the Notice of Charge has been complied with, and are reasonably satisfied that the employee was made aware of hearing of 26 June 2002.

The employee has made no appearance at the hearing and has filed no material in answer to the charge. The charge against him is that he is guilty of misconduct or default in relation to a practitioner's practice. There are three separate lots of particulars, one related to MW, one related to GW&A, and the other related to WR.

In relation to MW, the Tribunal is satisfied on the Brigginsshaw test of the following matters:

1. The employee knowingly and falsely represented to MW partner, PT, that he, the employee, was undertaking and passing examinations set by the Barristers Board;
2. The employee falsely pretended to the Magistrates Court at Brisbane in proceedings N11940 of 1999 that he was a solicitor for the plaintiff, when of course he was not a solicitor.
3. The employee signed the claim and requested a trial date in those proceedings, describing himself as a solicitor for the plaintiff, when he was not authorised by MW to do so.
4. The employee on a number of occasions at a Magistrates Court call-over in August 1998 falsely pretended to the Court that he was a solicitor.
5. In or about 1999, the employee filed a defence to a claim against him, using the firm name of MW as solicitor on the record, when he was not authorised to do so.
6. During the first half of 2000, the employee falsely pretended to an employee of the LA H Nightclub that he was a solicitor.
7. The employee falsely represented to PT of MW that on 6 April 2000 he had instructed at a trial in the Magistrates Court at Gayndah.

In these respects, the Tribunal is satisfied on the Brigginsshaw test that the employee is guilty of misconduct in relation to a practitioner's practice, namely, MW.

In relation to GW&A, the Tribunal is satisfied of and make the following findings on the Brigginsshaw test:

1. That in applying for employment for that firm, the employee relied on a copy of a reference purportedly given to him by PT of MW, when he knew that Mr T had not given him that reference.
2. The employee falsely represented to GW of GW&A that he was undertaking and passing examinations set by the Barristers Board.
3. That the Employee signed mail on the letterhead of the practice, when he had been specifically instructed by GW not to do so.

In those respects, the Tribunal is satisfied on the Brigginsshaw test that the employee is guilty of misconduct in relation to a solicitor's practice. Namely that of GW&A.

As to WR, the Tribunal is satisfied on the Brigginsshaw test and make the following findings:

1. On or about 16 July 2001, the employee relied on an application for employment on a CV which falsely represented to WR that he was then employed by GW&A.
2. Shortly after 16 July 2001 the employee falsely pretended to BR of WR that he, the employee, was undertaking the Barristers Board course, and that he would be admitted as a barrister at the end of 2001.

In these respects, the Tribunal is satisfied on the Brigginsshaw test that the employee is guilty of misconduct in relation to a solicitor's practice, namely, the practice of WR.

The Tribunal finds all of the particulars set out in the charge proved on the Brigginsshaw test. The Tribunal also considers that the matters set out in the charge amount to misconduct in relation to a solicitor's practice. The Tribunal is mindful of its duty to protect the public from persons who display a propensity to act dishonestly in relation to a solicitor's practice. The behaviour of the employee has been calculated and sustained over a reasonably considerable period. This gives the Tribunal little confidence that the employee would ever correct that behaviour. The Tribunal was therefore of the view that the only way to effectively protect the public is to order that on and from 26 June 2002, a person must not employ the employee in relation to a practitioner's practice.