

the standard of professional conduct observed or approved by members of the profession of good repute and competency. We rely on the decision of the full Court of South Australia in Re A[1927]S.A.S.R. 58.

The Tribunal dismisses Charge 3

The Tribunal in imposing this penalty has taken into account the three undertakings given by the practitioner. It has also taken into account the fact that the practitioner has not practised as a solicitor since the 30th of June 1994.

The Solicitors Complaints Tribunal

In the Matter of Gregory John Williams

Case No: SCT/11
Date of Hearing: 2 & 3 November 1998
Appearing Before: Mr G Fox (Chairperson)
Ms B Reaston
Ms M Green (Lay Member)
Penalty: Struck Off

Charges

On 2 and 3 November 1998, the Solicitors Complaints Tribunal heard the charges set out in the Notice of Charge dated 22 July 1998, as follows:

1. That during the period 5 October 1995 to 12 December 1996 the practitioner fraudulently misappropriated the sum of \$145,696.45, or part thereof, the property of the Estate of M (deceased), by paying the said sum from his trust account and applying the same to his own use and benefit, in circumstances where the practitioner had no lawful entitlement to the said sum.

Particulars

- (a) At all material times the practitioner was the solicitor for the administratrix of the Estate of M (deceased);
- (b) During the period from in or about September 1995 to in or about December 1996, the practitioner rendered professional services on behalf of the estate;
- (c) A reasonable charge to the estate for the said professional services rendered by the practitioner was a sum in the order of \$5,648.55;
- (d) During the period 5 October 1995 to 12 December 1996 the practitioner raised accounts

for the estate charging professional costs of \$151,345.00 for professional services purportedly rendered, being a sum grossly in excess of a reasonable sum, and caused the transfer of that sum from his trust account to his general account, and thereby caused the moneys to be intermingled with his own moneys and applied to his own use;

- (e) At all material times the practitioner knew or ought to have known that the sums charged to the estate for professional costs grossly exceeded a reasonable sum for such costs and that he was not otherwise lawfully entitled to apply such sums to his own use.
2. That during the period 5 June 1996 to 6 December 1996 the practitioner fraudulently misappropriated the sum of \$88,445.00, or part thereof, the property of the Estate of K (deceased) by paying the said sum from his trust account and applying the same to his own use and benefit, in circumstances where the practitioner had no lawful entitlement to the said sum.

Particulars

- (a) At all material times the practitioner was the solicitor for the executor of the Estate of K (deceased);
- (b) From in or about May 1996 to in or about December 1996, the practitioner rendered professional services on behalf of the estate;
- (c) A reasonable charge to the estate for the said professional services rendered by the practitioner was a sum in the order of \$4,075.95;
- (d) The deceased, by her will expressly provided that any executor, being a solicitor may act on behalf of the estate in his capacity as solicitor and shall be entitled to charge professional charges for work done by him, to a fee of not less than \$7,500.00;

(e) During the period 5 June 1996 to 6 December 1996 the practitioner produced accounts to the estate charging professional costs of \$95,945.00 for professional services purportedly rendered, being a sum grossly in excess of a reasonable sum, and caused the transfer of that sum from his trust account to his general account and thereby caused the moneys to be intermingled with his own moneys and applied to his own use;

(f) At all material times, the practitioner knew or ought to have known that the sums charged to the estate for professional costs grossly exceeded a reasonable sum for such costs and that he was not otherwise lawfully entitled to apply such sums to his own use.

3. That during the period 7 July 1994 to 23 August 1996 the practitioner fraudulently misappropriated the sum of \$124,428.70, or part thereof, the property of the Estate of C (deceased), by paying the said sum from his trust account and applying the same to his own use and benefit, in circumstances where the practitioner had no lawful entitlement to the said sum.

Particulars

- (a) At all material times the practitioner was the solicitor for and executor of the Estate of C (deceased);
- (b) During the period from in or about July 1994 to in or about August 1996, the practitioner rendered professional services on behalf of the estate;
- (c) A reasonable charge to the estate for the said professional services rendered by the practitioner was a sum in the order of \$6,496.30;
- (d) During the period 7 July 1994 to 23 August 1996 the practitioner produced accounts to the estate charging professional costs of \$130,925.00 for professional services purportedly rendered, being a sum grossly in excess of a reasonable sum, and caused the transfer of that sum from his trust account to his general account and thereby caused the moneys to be intermingled with his own moneys and applied to his own use;
- (e) At all material times the practitioner knew or ought to have known that the sums charged to the Estate for professional costs grossly exceeded a reasonable sum for such costs and that he

was not otherwise lawfully entitled to apply such sums to his own use.

4. Further, or in the alternative to Charges 1 – 4, the practitioner did, on diverse occasions as particularised hereunder, charge excessive fees for the provision of professional services in relation to the practitioner's practice.

Particulars

- (a) (i) In the matter of the Estate of M (deceased), the practitioner, as solicitor for the administratrix of the estate, did, during the period 5 October 1995 to 12 December 1996, charge professional costs totalling the sum of \$151,345.00;
- (ii) The practitioner caused the transfer of estate funds in the said sum of \$151,345.00 from his trust account to his general account in payment of the said costs;
- (iii) The said sum of \$151,345.00 was charged in circumstances where a reasonable sum for professional costs for the services rendered by the practitioner in relation to the administration of the said estate was a sum in the order of \$5,648.55.
- (b) (i) In the matter of the Estate of K (deceased) the practitioner as solicitor for and executor of the estate, did, during the period 5 June 1996 to 6 December 1996, charge professional costs totalling the sum of \$95,945.00;
- (ii) The practitioner caused the transfer of estate funds in the said sum of \$95,945.00 from his trust account to his general account in payment of the said costs;
- (iii) The said sum of \$95,945.00 was charged in circumstances where a reasonable sum for professional costs for the services rendered by the practitioner in relation to the administration of the said estate was a sum in the order of \$4,075.95 and in circumstances where the will of the deceased provided for the fee payable to her executor in his capacity as a solicitor to be not less than \$7,500.00.
- (c) (i) In the matter of the Estate of C (deceased) the practitioner, as solicitor for and executor of the Estate, did, during the period 7 July

1994 to 23 August 1996, charge professional costs totalling the sum of \$130,925.00;

- (ii) The practitioner caused the transfer of estate funds in the sum of \$130,925.00 from his trust account to his general account in payment of the said costs;
- (iii) The said sum of \$130,925.00 was charged in circumstances where a reasonable sum for professional costs for the services rendered by the practitioner in relation to the administration of the said estate was a sum in the order of \$6,496.30.

5. Further or in the alternative to Charges 1 and 6(a), the practitioner, being a solicitor and trustee of property, namely trust moneys, dealt with that property in breach of the terms of the trust and in breach of Section 8(1) of the Trust Accounts Act by, without authority, and without any other lawful entitlement, intermingling or alternatively causing the intermingling of the property with his own property and thereby applied the same to his own use and benefit.

Particulars

- (a) During the period from 5 October 1995 to 12 December 1996, the practitioner withdrew or alternatively caused the withdrawal of the sum of \$151,345.00 the property of the Estate of M (deceased) from the trust account to the general account without having delivered to the administratrix of the estate untaxed bills of costs in respect of such payment and without otherwise having any lawful entitlement hereto.

6. That the practitioner, in breach of his duty as a solicitor was guilty of serious neglect and/or was guilty of a failure to maintain reasonable standards of competence in or in connection with his dealings with property, namely estate funds.

Particulars – Re Estate of M

- (a) (i) M died interstate on 24 July 1995 and his spouse was appointed administratrix of his estate;
- (ii) At all material times the practitioner acted for the estate;
- (iii) The beneficiaries of the estate were the administratrix, PM and JM, as to one third each;

(iv) On 17 May 1996 (\$250,000.00) and on 29 October 1996 (\$67,617.67) the practitioner caused the sum of \$317,617.67 to be distributed to the beneficiary, JM;

(v) On 19 November the practitioner caused the sum of \$502,191.59 to be distributed to the lawfully appointed attorney of the administratrix, on her behalf and on behalf of the beneficiary, PM;

(vi) Following the distributions referred to in paragraphs (iv) and (v) above, there remained undistributed estate funds of \$6,010.11 retained in the practitioner's trust account, and unrealised estate funds in order of \$5,000.00; such that the estate could not be distributed equally as between the three beneficiaries;

(vii) In effecting the distribution of the Estate of M (deceased) to the beneficiaries thereof, the practitioner was guilty of serious neglect and/or was guilty of a failure to maintain reasonable standards of competence in his dealings with estate funds.

7. That the practitioner did, on diverse occasions as particularised hereunder, act in breach of Rule 85 of the Queensland Law Society Rules in that the practitioner, having been engaged by a person (not being an "exempted person" as defined in Rule 85) to negotiate or otherwise act in respect of a contract or mortgage under or upon which that person did, during the course of such engagement, act for such other person in respect of the same matter or in respect of any other matter in which the credit (or part of it) has been or was intended to be applied.

Particulars

(a) The practitioner acted:

- (i) for GEK in February 1995 in respect of an advance of \$12,000.00 to EJP; and
- (ii) for EJP in February 1995 in respect of the said advance of \$12,000.00; and
- (iii) for EJP in September 1995 with respect to a purchase by T Pty Ltd from D, in respect of which purchase part of the advance was applied.

8. That on or about 3 October 1996, the practitioner prepared and forwarded to the solicitors for J R M, a beneficiary as to one third in the Estate of M

(deceased), a statement of account which was, as the practitioner well knew, false and misleading in that:

- (a) The statement represented to the said beneficiary that income tax expenses and fees had been incurred in the sum of \$37,500.00 when in truth trust funds totalling \$135,395.65 had been paid on account of costs and outlays as at the date of the statement;

Further, the said statement of account was, as the practitioner well knew, false and misleading, or, in the alternative, recklessly made and given, uncaring as to its accuracy, in that:

- (b) The statement contended that the value of one third interest as at the time of the statement was \$11,431.59 when, in truth, and as the practitioner well knew, or ought to have known, the value of one third interest was in the order of \$15,635.00.

- 9. That the practitioner, in breach of his duty as a solicitor, and in breach of trust, failed, either in a timely manner, or at all, to provide a full trust account statement accounting for all moneys received and disbursements made on behalf of the Estate of M (deceased) or otherwise on behalf of the administratrix of the estate, notwithstanding a written request dated 18 October 1996 from the administratrix of the said estate to the practitioner that the practitioner provide such a statement of account.
- 10. That the practitioner, in breach of his duty as a solicitor, failed to honour written personal undertakings given by him in writing on 28 January 1997 to the Queensland Law Society Incorporated.

Particulars

- (a) By letter dated 28 January 1997 the practitioner undertook to the Society, by its Secretary:
 - (i) To cause a statement of account to be prepared in relation to the administration of the Estate of M and to forward a copy of that statement of account together with copies of the bills in relation to the estate to the administratrix and to the deceased's son within the next 14 days;
 - (ii) To cause a statement of account to be prepared in relation to the administration of the Estate of K and to forward a copy of that statement of account together with

copies of the bills in relation to the Estate to the beneficiaries of the residual Estate within the next 14 days;

- (iii) To cause a statement of account to be prepared in relation to the administration of the Estate of C and to forward a copy of that statement of account together with copies of the bills in relation to the Estate to the beneficiaries of the residual Estate within the next 14 days;

- (b) The practitioner failed to honour the undertakings described in paragraph 10(a) above, or any of them.

Hearing

Mr R G Perrett, solicitor of Clayton Utz, solicitors, appeared for the Queensland Law Society Incorporated.

Mr P D McMurdo, QC, instructed by Messrs N R Barbi, solicitor, appeared for the practitioner.

Findings and Orders

1. The Tribunal finds Charges 1, 2 and 3 proved.
2. As conceded the Tribunal finds Charges 4(a), (b) and (c), 5, 6(a), 7(a), 9, 10(a)(i), (ii), (iii), and 10(b) proved.
3. The Tribunal finds Charge 8 not proved.
4. The Tribunal finds the practitioner guilty of the charges referred to and that these matters constitute professional misconduct.
5. The Tribunal finds the practitioner guilty of misconduct.
6. The Tribunal orders that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.
7. The Tribunal further orders that Gregory John Williams pay the costs of the Queensland Law Society Incorporated in these proceedings including reserved costs, and the costs of the Clerk and Reporter, these costs to be agreed and failing agreement to be assessed by a costs assessor nominated by the Clerk to the Tribunal, such assessment to be binding on the parties.

Reasons

At the heart of the charges relating to the Estates of M, C and K, Charges 1, 2 and 3 are the allegations that Mr Williams charged excessive fees and then paid these to his own account without the consent or notification of the persons ultimately entitled to the funds. He has charged in relation to M, \$151,345.00; in relation to K, \$93,945.00; in relation to C, \$130,925.00.

Assessors engaged by the Queensland Law Society have assessed the legal fees in relation to these matters at \$5,648.55, \$4,075.95 and \$6,496.30 respectively.

Mr Whitney, an experienced practitioner, comes to a slightly different figure in relation to one of the matters. It must be acknowledged that the law surrounding charging of legal fees and taxation of costs in this period until recent reform was archaic and cumbersome and caused some distress and confusion to both solicitors and clients.

It is not surprising that, save in cases of specific complaint, issues of overcharging are usually brought to light by the Law Society's specialist auditors, rather than privately appointed auditors.

Nevertheless, the fees charged appear extraordinary on their face, and the gap between the fees charged and the assessments obtained by the Law Society are such as cannot be explained by executorial duties and requires an explanation.

Mr Williams has been unable to provide this explanation. His evidence before us was confusing and contradictory. In his affidavit, he said he was applying a charge rate of \$225.00 per hour. In relation to the M Estate, he says in his affidavit he proposed to deliver a bill upon finalisation. He has been unable to provide calculations supporting his account to this Tribunal. He could not have been in a position to provide this to Mrs M.

In his evidence before us, he said he billed what he thought was appropriate. When asked for an explanation, he referred to an assessment based on time and hours and the other things that make up a bill.

When pressed on particular accounts, he advised that he had split accounts or could not recall. He has been unable to provide a satisfactory explanation for work done which would justify these accounts. Mrs M had signed an authority to pay accounts "when the same may be rendered by you". To suggest that an account is rendered when it is simply printed, retained internally and not delivered to the client is an unsustainable exercise in semantics.

He justifies transfer of funds on other matters without consent of residuary beneficiaries on the basis that as executor he authorised himself as solicitor. The conflict of interest underpinning this cannot justify this approach.

In short, he has taken large sums of money that he is not able to justify, without the knowledge, other than perhaps in the most general terms, of the persons ultimately entitled. His fiduciary duties in these matters are of a particularly high order. In one matter, his client was a very elderly lady. In the other two matters, he was executor as well as the solicitor administering the estates.

We are satisfied on the Briggenshaw test that he knew at the time of transfer that the funds transferred from the estate to his own use were beyond that to which he was entitled. We find Charges 1, 2 and 3 proved.

In relation to Charge 4(a), (b) and (c), we find as conceded that the fees charged were excessive. We find as conceded Charges 5, 6(a), 7(a), 9, 10(i), (ii) and (iii) and 10(b) proved.

In relation to Charge 8, we are not satisfied that the actions were deliberate or reckless, rather than careless. We find this charge not proved.

It is tragic that a practitioner of Mr Williams' standing and years of experience is in the position that he finds himself today. The affidavits filed on his behalf attest to his character and high standing over many years, with glowing reports both from clients and his peers of the highest repute and standing.

The period during which these offences took place is limited. It is tempting to seek a medical explanation for his behaviour over this period, and this would be consistent with his participation in these proceedings. No evidence has been led to this effect.

Nevertheless, this jurisdiction is primarily protective. Considering this, the Tribunal feels it has only one option open to it, and orders that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.

Appeal

Mr Williams has lodged an appeal against the findings that he fraudulently misappropriated the sums of money referred to in Charges 1, 2 and 3.