

In the Matter of Practitioner X

Case No: SCT/46
 Date of hearing: 28 February and 6 March 2001
 Appearing before: Mr J S P O’Keeffe (Chair)
 Mr G C Fox
 Mr G Campbell-Ryder (Lay Member)
 Penalty: Fined \$5,000.00.

Charges

On 28 February and 6 March 2001, the Solicitors Complaints Tribunal heard the following charges brought by the Council of the Queensland Law Society:

That the practitioner charged excessive fees for the provision of legal services in the matters set out in the table below in that a reasonable charge for the practitioner’s costs in relation to those matters was not more than \$40,000.00 in total.

Particulars

File No	Name of Matter	Costs and Disbursements Billed
7900/97	M – Purchase from P	\$5,404.00
7901/97	M – EM, Motor Vehicle Accident	\$3,733.00
7902/97	M – DUI matters	\$7,136.50
7903/97	Will and Power of Attorney	\$1,872.00
7906/97	M – P Finalisation of matters (Disbursements)	\$48,322.53
7908/97	M – W-BI	\$2,011.25
7910/97	P-NAB	\$4,663.00
7911/97	M-P-Finalisation of matters	\$21,904.00
7913/97	M - Painting Business	\$2,366.25
7915/97	M – Police Charge matters	\$770.00
7916/97	M – Drivers Charge Matters	\$4,533.75
7918/97	P – Bank	\$2,694.00
7919/97	JC Matters	\$1,117.50
7920/97	TS motor vehicle	\$7,950.00
7921/97	P – S	\$13,886.00
7922/97	P – Unit	\$5,977.00
7923/97	P – Miscellaneous advices	\$19,624.00
7924/97	P – Bankers Trust Matters	\$10,554.00
7925/97	P – Tax return matter	\$1,182.00
7926/97	P – Estate matters (probate etc)	\$20,784.00
7927/97	P – RT Body Corporate	\$12,393.00

7928/97	P – Sale of Unit	\$16,439.00
7929/97	P – re B	\$7,417.00
7931/97	P – re CM	\$7,879.00
7932/97	P – re M	\$832.50
7933/97	P – re K	\$990.00
7934/97	P – re Land tax	\$306.00
7935/97	P – re various matters	\$1,186.10
7936/97	P – re Will	\$3,813.00
7937/97	P – re IM	\$12,658.50
7938/97	P – re Miscellaneous matters	\$10,183.00
7939/97	P – re drivers licence	No amount
7940/97	P – Finalisation of estate of P	\$1,698.00
7941/97	P – Finance matters	\$7,269.50

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
 Mr B Bartley, solicitor of Brian Bartley & Associates, solicitors.
- (b) For the practitioner:
 AJ Glynn SC, instructed by Robertson O’Gorman solicitors.
- (c) For the complainant:
 Nil

Findings and Orders

1. The tribunal grants leave to the Queensland Law Society Inc to amend the Notice of Charge by inserting the words “and any disbursements” following the words “for the practitioner’s costs” and by substituting “\$88,000.00” instead of “\$40,000.00”.
2. The tribunal grants leave to the Queensland Law Society Inc to amend the Notice of Charge by adding the words “or (b) in the alternative, that the practitioner charged excessive fees for the provision of legal services to Mrs P and to Mr CM in that the practitioner sought payment of amounts totalling \$206,343.88 for the practitioner’s costs and disbursements when a reasonable charge was not more than \$88,000.00.”
3. The tribunal finds the charges as amended proved and that this constitutes professional misconduct.

The Solicitors Complaints Tribunal

4. The tribunal finds the practitioner guilty of professional misconduct.
5. The tribunal orders that the practitioner pay a penalty of \$5,000.00 to the fund, such amount to be paid by no later than 6 May 2001.
6. The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Inc and incidental to these proceedings, as agreed between the parties, and failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

The practitioner has been charged with charging excessive fees for the provision of legal services. The original charge as amended by consent and during the adjourned hearing today, the solicitor for the Queensland Law Society Incorporated obtained leave to add an alternate charge with the consent of Counsel for the practitioner.

The charges are encapsulated in bills delivered in taxable form which were requested by the solicitors for MM, the client, after the amount originally billed by the practitioner (\$125,000.00) was disputed. There is argument as to whether the charges properly relate to the work encompassed by the original account dated 28th June 1996 (Exhibit 2) or for a larger amount set out in paragraph (b) of the charge.

There is no evidence before the tribunal that persuades us to find that the practitioner was seeking payment of an amount greater than the \$125,000.00. However, on the view which we take, this is of little consequence, as counsel for the practitioner has conceded that the practitioner did charge excessive fees on delivery of the bill for \$125,000.00 dated 28 June 1996 (Exhibit 2) and, furthermore, that this constitutes professional misconduct.

In considering penalty, the tribunal has taken into account that the practitioner has already suffered substantial monetary loss in the writing off of disbursements and professional time to the extent of approximately \$88,000.00.

In the Matter of Practitioner X

Case No: SCT/40
Date of hearing: 6 and 7 March 2001
Appearing before: Mr G C Fox (Chairperson)
Mr P Martinez
Mr G Campbell-Ryder (Lay Member)
Penalty: Fined \$30,000.00

Charges

1. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, namely clients' trust monies, dealt with that property in breach of the terms of the trust and in breach of s.8 of the *Trust Accounts Act* by, without authority, intermingling the property with his own property, and thereby applied the same to his own use and benefit.

Particulars

- (a) (i) On 4 September 1997 the practitioner withdrew the sum of \$12,000.00 initially the property of diverse unidentified clients, and from 5 September 1997 the property of his client IB from the trust account to the general account without having any lawful entitlement thereto;
- (ii) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use;

- (iii) On 28 November 1997 the practitioner withdrew the sum of \$5,446.62 the property of his client IB from the trust account to the general account without having any lawful entitlement thereto;
- (iv) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use.
- (b) (i) On 9 January 1998 the practitioner withdrew the sum of \$25,000.00 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;
- (ii) The said monies were thereby mixed with the practitioners own money and applied to the practitioners own use;
- (iii) On 15 May 1998 the practitioner withdrew the sum of \$197.50 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;
- (iv) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use;
- (v) On 13 August 1998 the practitioner withdrew the sum of \$10,000.00 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;