

LEGAL PRACTICE TRIBUNAL

JUDGMENT

de Jersey CJ
(with Ms C Endicott and Dr S Dann)

14 December 2004

LEGAL SERVICES COMMISSIONER v HOCKEY (SC9618 of 2004)

- [1] **de JERSEY CJ:** The Legal Services Commissioner has applied to this Tribunal, under s276 of the *Legal Profession Act 2004*, for orders against the respondent solicitor Stephen John Hockey. The Commissioner seeks a finding that the respondent has been guilty of professional misconduct, or at least unsatisfactory professional conduct, and an order under s 280(2)(a) of the Act recommending that his name be removed from the local roll, together with an order under s 286 that he pay the Commissioner's costs.
- [2] The respondent was served with the application on 15 September 2004. He was previously aware of the charges, however, having been given notice via this Tribunal's predecessor, the Solicitors Complaints Tribunal, in June this year. On 27 August 2004, the respondent wrote to the secretary of the Solicitors Complaints Tribunal saying:

“Please be advised that although I am entitled to furnish a formal notice of address for service together with material in answer to the charges laid by the Society and, in addition, am entitled to appear at the scheduled hearing, I do not intend to furnish any such material nor do I intend to appear before the Tribunal either by Counsel or in person...in not proposing to appear, I accept whatever fate the Tribunal might see fit to impose upon me with respect to the charges as presently laid.”

As to the charges, he said:

“I do not dispute any of the allegations contained in the same and I agree that I am guilty of the conduct described therein.”

The respondent makes a point in relation to one of the charges, namely that he repaid the amount misappropriated, and then went on to record in some detail the personal circumstances in which he did the acts giving rise to the charges.

[3] In the course of that, the respondent makes this concession:

“I further realise that my conduct brought the profession into disrepute and that, as such, I cannot expect to be permitted to remain on the roll of solicitors of the Supreme Court of Queensland.”

The respondent says that he has been charged with a substantial number of criminal offences arising from these circumstances, to which he intends to plead guilty by way of ex officio indictment, and that he expects to be imprisoned. He concludes in these terms:

“Please note that I do not seek by this correspondence to diminish the criminality of what I have done. Rather, I have raised the matters that I have in the hope that after I have served my sentence I might be rehabilitated into society and that, at the appropriate time, the circumstances which I have put forward might be taken into account when an assessment is being made as to what should be the extent of the rehabilitation to be allowed to me.”

[4] Having been duly served with the proceedings in September, and notified in early December of today’s hearing, the respondent must be taken in these circumstances to have indicated clearly that beyond making the points covered in his letter of 27 August 2004, he does not wish to be heard in relation either to liability or penalty. When this hearing was initially convened, my intention was that it amount to a directions hearing. The respondent’s letter of 27 August 2004 was first drawn to my attention by a letter from the Commissioner dated 6 December 2004 which I saw for the first time on Friday of last week. With the respondent’s attitude just

mentioned so clearly emerging from that letter, it was obvious to me that today's proceedings should be reconstituted with a view to the full determination of the matter. It was in those circumstances that Ms Endicott from the "practitioner panel", and Dr Dann, from the "lay panel", those panels being established under s 437 of the Act, became involved in the hearing.

[5] Notwithstanding the clarity of the position emerging from the respondent's letter of 27 August 2004, he was nevertheless advised by notice delivered to the nominated address last Friday afternoon, of the Tribunal's intention to proceed this morning with a full hearing, and he was reminded of his entitlement to appear to make submissions. Unsurprisingly in view of his letter, he has not appeared this morning.

[6] It is appropriate to proceed this morning on the basis the letter of 27 August 2004, together with the respondent's non-appearance, is an admission of the charges. The Tribunal may inform itself as it sees fit. See s 475(1)(d). Two affidavits have been filed. Exhibited to one are details of the police charges, which cover more clients and many other defalcations. Because the respondent has not replied to that material, I should not have recourse to it, notwithstanding his stated intention to plead guilty. The other material is either clearly uncontroversial, or in elaboration of the matters the respondent admits, and could be received in relation to penalty. But there is really no need for me to go beyond the charges, the respondent's admission of them, and the other matters raised in his letter.

[7] The first charge is that the respondent forged the signature of his client Dolich on a purported mortgage over the client's property, to secure a loan of \$45,000 and then misappropriated the net loan monies of \$43, 155.75 to his own use. That occurred

in December 1998. He facilitated the registration of the forged instrument of mortgage. A year later, the respondent forged his client's signature again, to facilitate an extension of the term of the loan, and did so yet again in August 2002. In the meantime, in June 2001, he had forged his client's signature to secure a refinancing of the loan.

[8] The second charge involves similar conduct in relation to a client Kelava, which involved his fraudulently misappropriating the net loan monies of \$82,380.63. The first forgery in this case occurred in May 2000, with further forgeries, to secure extensions, in July 2001 and June 2002.

[9] The third charge concerned similar conduct in relation to a client Morley Estates Pty Ltd, in which the respondent fraudulently misappropriated \$143,246.25. The amount advanced here was \$150,000. The initial forgery occurred in December 2003, on an acceptance of loan offer document, with a subsequent forgery on the instrument of mortgage. In each of these cases, it may be added, the respondent of course appreciated that the dishonestly executed documents would be registered, and he facilitated that by producing the document to the lender's solicitor. In his letter of 27 August 2004 the respondent makes the point that he reimbursed Morley Estates Pty Ltd in full, for \$150,000, together with an additional approximately \$5,000 to cover the client's probable liability for penalty interest and the costs of discharging the security.

[10] The fourth charge concerns the client Lee Bird Designs. The respondent acted for that client in the purchase of a commercial property at Main Beach. In November

2003 he received \$110, 662.50 by cheque, to cover stamp duty. He misappropriated that amount, applying it for his own benefit.

- [11] The fifth and final charge involves similar offending in relation to the client Soldatic. In December 2003 the respondent misappropriated \$46,912.50, intended to cover stamp duty, applying it to his personal Visa account.
- [12] The character of this offending was extremely grave. It was substantial in extent, involving many transactions, and occurred over a lengthy period, from December 1998 to December 2003. The respondent defrauded his clients of large amounts, aggregating \$426,357.63. Save for the \$155,000 the respondent repaid, the Fidelity Fund will have been the source of other recompense. Not only did the respondent betray the trust of his clients: he also facilitated the corruption of the public land register.
- [13] The respondent's explanation for his offending, as presented in his letter of 27 August 2004, is that he believed, wrongly, that he was dying of prostate cancer. The results of blood testing led him into this belief, reinforced by a family history of the disease. His fear induced anger and what he described as a cavalier or reckless attitude to his practice. He concedes that he was in no fit state to practise from 1998, and should have sought professional counselling. He was also affected by the sudden deaths of others close to him. He learnt in October 2003 that he was cancer free, and believed that he had been spared from an otherwise likely death. Delivering the eulogy at a close friend's funeral in December 2003, he came to the view that he must purge his conscience, and on 8 January 2004 revealed his

misconduct to the Queensland Law Society. He subsequently cooperated with the Society, and the police in their investigation.

[14] Regrettably for the respondent, as he in effect acknowledges, these circumstances could not now justify the Tribunal's continuing to hold him out as fit to practise. He has clearly been guilty of professional misconduct, of grave proportion, and of a character fundamentally repugnant to what must ethically be expected of practising practitioners. He was repeatedly and grossly dishonest, exploiting his clients for his personal financial benefit.

[15] I find the respondent guilty of professional misconduct in the particulars charged. I make an order recommending that his name be removed from the roll of Queensland solicitors. I order that the respondent pay the costs of the Commissioner of and incidental to the proceeding.