

In the Matter of Practitioner X

Case No: SC/390

Date of Findings: 15 July 1997

Appearing Before: Mr J S P O'Keefe (Acting Chairman)

Mr A W Watt

Ms C C Endicott.

Penalty: Fined \$1,000.

Charges

The allegations in the case formulated by the Council of the Queensland Law Society Incorporated were set out in paragraphs 1 to 4 inclusive of the Application of the Queensland Law Society Incorporated dated 30 April 1997 which stated as follows:

1. In breach of Rules 82(2) and 82(3) of the Rules of the Queensland Law Society Incorporated, the practitioner failed to furnish a sufficient and satisfactory explanation in writing of the matters in respect of which he had been requested to furnish such explanation pursuant to Rules 82(1) or 82(2) of the Rules of the Society as particularised hereunder;

Particulars

In connection with the matter of a complaint by J D and I D:

- (a) By letter dated 5 June, 1996, the Society, by its Secretary, requested the practitioner to furnish within fourteen (14) days of 5 June, 1996 a sufficient and satisfactory written explanation to the matters referred to in the letter of complaint dated 30 May, 1996 received by the Society from Mr & Mrs D. No reply was received from the practitioner within the time specified;
- (b) By letter dated 24 June, 1996, the Society, by its Secretary and having received no reply to its aforesaid letter of 5 June, 1996, requested the practitioner to furnish to it within seven (7) days of 24 June, 1996 a detailed reply in relation to the said complaint from Mr & Mrs D. No reply to that letter was received by the Society from the practitioner within the time specified;
- (c) On 3 July, 1996 the Society received a letter from the practitioner requesting an extension of twenty-one (21) days in which to respond to the matters raised in the Society's said letters regarding the complaint by Mr & Mrs D on the grounds that the Solicitor who had the conduct of the relevant files had been overseas since 10 June, 1996 attending to family matters in Fiji and he should return by the middle of July, 1996. The Society did not receive a response from the practitioner by the middle of July, 1996;

- (d) By letter dated 26 July, 1996, the Society, by its Secretary requested the practitioner to furnish to it within seven (7) days of 26 July, 1996 a reply in relation to the said complaint by Mr & Mrs D. No reply was received from the practitioner within the time specified.

2. In breach of Rule 83(2) of the Rules of the Queensland Law Society Incorporated, the practitioner failed to furnish a sufficient and satisfactory reply in writing to requests therefore, which failure continued for a period of fourteen (14) days from the practitioner's receipt of the notification given pursuant to Rule 83(1) of the Rules of the Society;

Particulars

In connection with the matter of a complaint by J D and I D:

- (a) By Notice dated 15 August, 1996, pursuant to Rule 83 of the Rules of the Society, the Secretary of the Society being duly authorised in that regard, notified the practitioner that if he failed to furnish a satisfactory reply in writing to the matters referred to in the notice, for a period of fourteen (14) days from the date of receipt of the notification, he would be liable to be dealt with for Professional Misconduct. The practitioner received the Notice by facsimile on 15 August, 1996 and the Notice was also served by ordinary pre-paid post addressed to the practitioner by his name and at his place of business. No reply to that Notice was received by the Society from the practitioner within the time specified;
 - (b) By letter dated 6 September, 1996 and received by the Society by facsimile that day, the practitioner replied to the aforesaid notice dated 15 August, 1996.
3. In breach of Rules 82(2) and 82(5) of the Rules of the Queensland Law Society Incorporated, the practitioner failed to produce all books, papers, files, securities, other documents, records or information in the custody, possession or control of the practitioner and which he is entitled at law to produce and which he had been called upon to produce pursuant to Rules 82(2) or 82(5) of the Rules of the Society as particularised hereunder.

Particulars

In connection with the matter of a complaint by J D and I D:

- (a) By letter dated 11 September, 1996 the Society, by its Secretary requested the practitioner to furnish within seven (7) days of 11 September, 1996 the relevant files relating to the matters referred to in a letter of complaint dated 30 May, 1996 received by the Society from J D and I D. Neither the files nor a reply was received from the practitioner within the time specified;
- (b) By letter dated 25 September, 1996 the Society, by its Secretary and having received no reply to its aforesaid letter of 11 September, 1996 requested the practitioner to furnish to it within seven (7) days of 25 September, 1996 the said files. Neither the files nor a reply to that letter were received by the Society from the practitioner within the time specified.

4. In breach of Rule 83(2) of the Rules of the Queensland Law Society Incorporated, the practitioner failed to furnish a sufficient and satisfactory reply in writing to requests therefore, which failure continued for a period of fourteen (14) days from the practitioner's receipt of the notification given pursuant to Rule 83(1) of the Rules of the Society;

Particulars

In connection with the matter of a complaint by J D and I D:

- (a) By Notice dated 3 October, 1996, pursuant to Rule 83 of the Rules of the Society, the Secretary of the Society being duly authorised in that regard, notified the practitioner that if he failed to furnish a satisfactory reply in writing to the matters referred to in the Notice, for a period of fourteen (14) days from the date of receipt of the notification, he would be liable to be dealt with for Professional Misconduct. The practitioner received the Notice by facsimile on 3 October, 1996 and the Notice was also forwarded to the practitioner that day by ordinary pre-paid post addressed to the practitioner by his name and at his place of business. No reply to that Notice was received by the Society from the practitioner within the time specified."

On the 15th day of July 1997 the matter came on for hearing before the Statutory Committee.

Mr P Ryan, Solicitor, of Messrs Biggs & Biggs, Solicitors, appeared for the Queensland Law Society Incorporated.

The practitioner appeared in person. The practitioner pleaded guilty to the allegations contained in the Application dated and filed the 30th day of April 1997 and the Affidavit of Keith William Thompson sworn the 30th day of April 1997.

No oral evidence was called in respect of the charges.

Submission

The Society's solicitor submitted as follows:

The charges were made up of two breaches of Rule 82 and two breaches of Rule 83 involving two personal injuries actions in which the practitioner acted for Mr & Mrs D. The matters were not dealt with efficiently or progressed over a period of some five years. The complainants had not received any regular feedback from the practitioner and ultimately, it was determined that the files had been lost.

The practitioner had not shown a great deal of cooperation with the Society, although he had eventually provided some explanation and had eventually corresponded with the Society. It was the Society's view that the conduct of the practitioner amounted to professional misconduct.

The Society looked to the Committee to indicate to the practitioner and to practitioners generally that when they were required by the Society to give an explanation under Rule 82 and then when they were served with a formal notice under Rule 83, those matters must be responded to promptly so that their reputation and that of the Society may be maintained.

That had not occurred in this case. The practitioner had seen fit to delegate the matter to an employed solicitor in his office rather than give the matter his personal attention which was the appropriate action of a partner of a firm, in order to preserve that firm's reputation.

On the question of penalty, it was submitted that, given the seriousness of the matter, the Committee should consider a fine of some thousands of dollars and that it was open to the Committee to consider a short period of suspension.

The practitioner submitted as follows:

Upon receipt of the correspondence from the Society, it was referred by the practitioner to his employed solicitor who had the conduct of the matter. That solicitor was absent from the Practice due to overseas travel and later illness. However, the practitioner had been led to believe that the employed solicitor had responded to the Society.

The practitioner conceded that he had failed to comply with the rules.

In relation to the failure to respond to the request for delivery of the file, the practitioner stated that an extensive search of his office had failed to locate the file and he was at a loss to explain its whereabouts.

The practitioner submitted that the explanation given to the Committee was reasonable in the circumstances and that the Committee should not consider his conduct to be professional misconduct.

The practitioner submitted that a suspension would be very harsh in the circumstances and, in view of the fact that he had no antecedents.

Findings and Orders

THE COMMITTEE ORDERED as follows:

The practitioner having admitted the charges set out in the Application of the Queensland Law Society Incorporated filed on the 30th day of April 1997 and having admitted the particulars set out in two Affidavits of Keith William Thompson filed on the 30th day of April 1997 and the 30th day of June 1997, the Committee found the practitioner guilty of the charges and further found the practitioner guilty of professional misconduct.

The Committee fined the practitioner the sum of \$1,000. The Committee ordered that the fine of \$ 1, 000 be paid by at least ten instalments of \$100 each, the first payment to be made on or before 15 August 1997 and thereafter on or before the 15th day of each and every calendar month.

The Committee further ordered that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to this application, the costs of the Clerk to the Statutory Committee and the shorthand writer to be assessed or taxed and the Committee directed that the Clerk to the Statutory Committee shall be entitled to his costs as a Solicitor of perusing documents filed, and care and consideration.