

The Solicitors Complaints Tribunal

for not complying with the requirements to provide an explanation in writing within the specified period.

The practitioner did not comply with the Council's requirement within 14 days or at all.

Findings and Orders

The tribunal finds the practitioner guilty of professional misconduct with respect to the two charges in the Notice of Charge.

The tribunal orders that the practitioner pay a penalty of \$3,500.00 to the fund.

The tribunal orders by consent that the practitioner pay the costs incurred by the Queensland Law Society Incorporated of and incidental to this application, as agreed between the parties or, failing agreement, as assessed by Monsour Legal costs Pty Ltd.

The tribunal further orders that the penalty and costs be paid by 6 equal calendar monthly instalments commencing on 31 March 2001.

Reasons

The practitioner through his counsel and in his affidavit sworn on 20th February 2001, admitted the charges and conceded he was guilty of professional misconduct in relation to the 2 charges brought against him.

The tribunal notes that the practitioner had ignored correspondence from the Queensland Law Society and a notice served under s.5H(ii) of the *Queensland Law Society Act*.

The tribunal regards the conduct of the practitioner as serious, as it indicates an unwillingness to adhere to the acceptable standards of professional practice expected from Queensland solicitors.

Without an adherence to the system of conduct arising from s.5G and s.5H of the Act, the regulation of the profession by the Queensland Law Society will be significantly impaired. The public has the right to expect practitioners to co-operate with the regulation of the profession in accordance with the dictate of the law of the land.

The tribunal notes that this is the second occasion that the practitioner has been disciplined and considers that the penalty imposed should take this fact into account.

The tribunal, however, also notes the material filed in mitigation by the practitioner and acknowledges that the practitioner's financial position is not strong, and that a penalty of \$3,500.00 plus the payment of costs, would in the circumstances be an appropriate penalty and would be a deterrent to other practitioners who attempt to fail to respond properly to correspondence from the Society.

In the Matter of Jonathan Paul Lancaster

Case No: SCT/45
Date of hearing: 28 February 2001
Appearing before: Mr J S P O'Keeffe (Chairperson)
Mr G C Fox
Mr G Campbell-Ryder (LayMember)
Penalty: Struck Off

Charges

Charge 1

- (a) The practitioner acted for PD in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 24 February 1995.
- (b) The practitioner failed to give notice of claim to Suncorp General Insurance Ltd ("Suncorp") as the insurer of the proposed defendant pursuant to s.37

of the *Motor Accident Insurance Act* ("the Act") within the time prescribed or at all.

- (c) By letter dated 19 March 1999 addressed to Suncorp, the practitioner falsely asserted that notice of claim had been given to Suncorp and provided to Suncorp what purported to be copies of a letter from the practitioner to Suncorp dated 19 May 1995 and of the notice of claim.
- (d) In or about September 1999, the practitioner falsely represented to PD that his claim had been settled for \$60,000.00 and procured execution by PD of a form of release, discharge and indemnity recording such settlement when, in fact, PD's claim had not been settled.

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Charge 2

- (a) The practitioner acted for MJ in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 10 November 1995.
- (b) The practitioner failed to give notice of claim to Suncorp as the insurer of the proposed defendant pursuant to s.37 of the Act within the time prescribed or at all.
- (c) On or about 29 February, 2000 the practitioner falsely represented to MJ that her claim had been settled for \$420,000.00 and procured execution by MJ of a form of release, discharge and indemnity recording such settlement when, in fact, MJ's claim had not been settled.
- (d) On or about 3 May 2000, the practitioner affirmed a false affidavit in opposition to an application made by Suncorp to dismiss proceedings instituted by the practitioner on behalf of MJ. In the affidavit, the practitioner falsely affirmed and declared:
 - (i) that under cover of a letter dated 24 June 1997, a notice pursuant to s.37 of the Act had been forwarded to Suncorp by ordinary mail;
 - (ii) that the document which comprised Exhibit "JPL1" to the affidavit was a true copy of that letter and of the notice of claim.

Charge 3

- (a) The practitioner acted for MS in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 10 November 1995.
- (b) The practitioner failed to give notice of claim to Suncorp as the insurer of the proposed defendant pursuant to s.37 of the Act within the time prescribed or at all.
- (c) On or about 29 February, 2000 the practitioner falsely represented to MS that her claim had been settled for \$585,000.00 and procured execution by MS of a form of release, discharge and indemnity recording such settlement when, in fact, MS's claim had not been settled.
- (d) On or about 3 May, 2000 the practitioner affirmed a false affidavit in opposition to an application made by Suncorp to dismiss proceedings instituted by the practitioner on behalf of MS. In the affidavit, the practitioner falsely affirmed and declared:
 - (i) that under cover of a letter dated 24 June, 1997, a notice pursuant to s.37 of the Act had been forwarded to Suncorp by ordinary mail;

- (ii) that the document which comprised Exhibit "JPL1" to the affidavit was a true copy of that letter and of the notice of claim.

Charge 4

- (a) The practitioner acted for KD in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 25 April 1997.
- (b) The practitioner failed to give notice of claim to Suncorp as the insurer of the proposed defendant pursuant to s.37 of the Act within the time prescribed or at all.
- (c) By letter dated 19 April 2000 addressed to Suncorp, the practitioner falsely asserted that he had written to Suncorp by letter dated 26 August 1997 and enclosed what purported to be a copy of that letter enclosing a notice of claim form.
- (d) The practitioner failed to inform KD that he had not given notice to Suncorp and that, as a result of such failure, KD was precluded from pursuing a claim for damages. The practitioner led KD to believe that she could still pursue that claim by discussing with KD's father, in about mid 2000, a proposed settlement of the claim in the sum of \$120,000.00.

Charge 5

- (a) The practitioner acted for TH in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 16 January 1995.
- (b) The practitioner failed to give notice of claim to Suncorp as the insurer of the proposed defendant pursuant to s.37 of the Act within the time prescribed or at all.
- (c) On or about 20 June 2000 the practitioner affirmed a false affidavit in opposition to an application made by Suncorp to dismiss proceedings instituted by the practitioner on behalf of TH. In the affidavit, the practitioner falsely affirmed and declared:
 - (i) that under cover of a letter dated 19 July 1995, a notice pursuant to s.37 of the Act had been forwarded to Suncorp by ordinary mail;
 - (ii) that the document which comprised Exhibit "JPL1" to the affidavit was a true copy of that letter and of the notice of claim.

Charge 6

In breach of s.8(1) of the Trust Accounts Act 1973, the practitioner withdrew moneys from funds held in his trust account on behalf of the estate of MK for the purpose of making payment to himself for professional costs and outlays in circumstances in which no bill of costs had been prepared.

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Date	Amount
10.12.98	\$1,500.00
23.12.98	\$500.00
25.06.99	\$2,000.00
11.11.99	<u>\$1,000.00</u>
Total	<u>\$5,000.00</u>

Appearances

- (a) For the Council of the Queensland Law Society Inc:
Mr B Bartley, solicitor of Brian Bartley & Associates, solicitors.
- (b) For the practitioner:
Mr T O’Gorman, solicitor of Robertson O’Gorman, solicitors.
- (c) For the complainant:
Nil

Findings and Orders

1. The tribunal finds all charges proved and that they constitute professional misconduct.
2. The tribunal finds the practitioner guilty of professional misconduct.
3. The tribunal further orders that the name of Jonathan Paul Lancaster be struck from the Roll of Solicitors of the Supreme Court of Queensland.
4. The tribunal further orders that Jonathan Paul Lancaster pay the costs incurred by the Queensland Law Society Incorporated as agreed between the parties or, failing agreement, as assessed by Monsour Legal Costs Pty Ltd.

Reasons

The practitioner has been called upon to respond to six charges. Charges 1 to 5 are very similar and what transpired with respect thereto was very similar. The facts recited in all six charges were admitted by Mr O’Gorman, the practitioner’s solicitor. The practitioner went on a journey of failing to give required notices to Suncorp with respect to five clients (charges 1 to 5 inclusive); making false representations to clients (charges 1, 2 and 3) leading to some of them incurring liability by entering into financial commitments; and of affirming false affidavits (charges 2, 3 and 5). The facts recited in charge 6 allege a breach of s.8(1) of the *Trust Accounts Act*.

All of the facts before us are serious, evidencing an ongoing course of deception. The facts recited in all charges have been admitted by the solicitor for the practitioner.

The tribunal finds all charges proved and that they constitute professional misconduct.

The tribunal finds the practitioner guilty of professional misconduct.

Mr O’Gorman, solicitor for the practitioner, tendered a report by Dr Mary Maksan, Exhibit 3, which had been considered by the Tribunal. She has expressed the opinion that, due to the complexity of his condition, a definitive opinion on his prognosis must wait 12 months, as it is dependent on his response to treatment over that time.

Mr Bartley, the solicitor for the Society, referred the tribunal to the decision of the Statutory Committee in No. 368, handed down on 2nd August 1995, which has also been considered by the tribunal. Mr Bartley has acknowledged that there was no element of personal gain by the practitioner through his course of conduct.

Mr O’Gorman advised the tribunal that he had instructions not to object to a striking off. The tribunal is of the opinion that, having in mind the seriousness of the finding made by it against the practitioner, it cannot permit the practitioner to continue in practice.