

4. Order that the respondent pay the costs of the Minister for Justice and Attorney-General relating to his appeal, to be taxed, and pay the costs of the Queensland Law Society Incorporated relating to the appeal, fixed at the sum of \$2,000.

## The Queensland Law Society Solicitors Complaints Tribunal

### In the Matter of practitioner X

**Charge No:** 1  
**Date of Hearing:** 5 May 1998  
**Appearing Before:** Mr T M Treston  
(Chairperson)  
Mr M Meadows  
Mr G Campbell-Ryder (Lay Member)  
**Penalty:** Fined \$7,500

#### Charges

On May 5, 1998 the Solicitors Complaints Tribunal heard charges laid by the Council of the Queensland Law Society by Notice of Charge dated March 3, 1998 against practitioner X. The practitioner pleaded guilty to the following charges:

1. That in breach of Rule 84 of the Rules of the Queensland Law Society Incorporated ("the Society"), the practitioner has failed or neglected to render a bill of his costs in the matter of the estate of Mr Y deceased within a reasonable time of being so requested by letter dated October 15, 1996 from solicitors on behalf of the executor of the said estate.

2. That the practitioner has failed to keep the said executor fully apprised of all significant developments in relation to the said estate, despite being requested to do so.

#### Particulars

- (a) On or about the following dates, the executor of the estate telephoned the practitioner requesting that the practitioner return his telephone call in relation to the estate:

- 20 May 1996
- 3 June 1996
- 21 June 1996
- 12 July 1996 (two calls)
- 29 July 1996

- (b) By letter dated August 5, 1996 the executor requested the practitioner to provide a report in relation to the finalisation of the said estate.

- (c) By letter dated August 27, 1996, solicitors for the executor requested from the practitioner a report as to the position of the estate.
  - (d) By letter dated September 25, 1996, solicitors for the executor requested of the practitioner "a copy of the Probate document, a list of assets as disclosed in the probate application and a report on what has still to be done".
  - (e) By letter dated October 15, 1996, solicitors for the executor sought from the practitioner "a copy of your trust account ledger page or other accounting from which our clients will be able to ascertain what transactions have taken place".
  - (f) By letter dated November 8, 1996, the Society sought from the practitioner a sufficient and satisfactory explanation in respect of the matters raised in a letter dated November 1, 1996 from solicitors for the executor to the Society seeking assistance in relation to the matters raised in the letters particularised in sub-paragraphs (b) to (e) hereof.
  - (g) By letters dated November 26, 1996 and December 20, 1996, the Society sought from the practitioner a response to its letter dated November 8, 1996.
  - (h) The practitioner failed to respond to the requests particularised in sub-paragraphs (a) to (g) hereof save that:
    - (i) On September 11, 1996 the practitioner telephoned the solicitors for the executor and advised to the effect that finalisation of the estate had been delayed, that there was about \$6,000 in the practitioner's trust account and that there were a few loose ends;
    - (ii) On December 11, 1996, the practitioner advised the Society that he had forwarded the balance of the moneys held in his trust account to the solicitors for the executor and that he would be responding to the complaint during the course of the week.
3. That the practitioner ignored repeated requests made by the Society and by the solicitors acting on behalf of the said executor that the practitioner deliver to the executor's solicitors his file in relation to the estate.

The requests were made of the practitioner in the following correspondence:

Letter solicitors for the executor to the practitioner:  
15 October 1996

Letter from the Society to the practitioner:  
14 February 1997

Letter from the Society to the practitioner:  
17 March 1997

Letter from the Society to the practitioner  
30 April 1997

Notwithstanding that the practitioner had been censured by the Professional Standards Committee of the Society on January 30, 1997 pursuant to Rule 82(4) of the Rules of the Society in respect of the practitioner's breach of Rule 83, the practitioner continued to fail to respond to the said requests until June 24, 1997 when the practitioner forwarded to the solicitors for the executor, his correspondence file up to August 10, 1995, relating to transmission of title of the deceased's home unit and preparation of a contract for the sale of that property.

4. That in breach of Rule 82(3) of the Rules of the Society, the practitioner failed to furnish a sufficient and satisfactory explanation in writing in response to a letter dated March 19, 1997 from the Society after being called upon by notices in writing under the hand of the Secretary of the Society dated May 22, May 26 and July 9, 1997, in that the practitioner failed to respond to the Society's request that he confirm that a Deed of Variation of Mortgage from Mr A to the practitioner as trustee for trust B had been stamped and registered in respect of a further advance of \$25,000 made on September 24, 1996.
5. That pursuant to Rule 83(2) of the Rules of the Queensland Law Society, the practitioner is guilty of professional misconduct in that the practitioner failed to furnish a sufficient and satisfactory reply in writing

to requests therefor, which failure continued for a period of 14 days from the practitioner's receipt of notification given pursuant to Rule 83(1) of the Rules of the Queensland Law Society as set out below:

- (a) the requests were made by letters dated May 26, 1997 and July 9, 1997 from the Society to the practitioner;
- (b) notification was given by the Society to the practitioner pursuant to Rule 83(1) on July 22, 1997.

### **Findings and Orders**

The Tribunal found upon the material admitted in evidence before it and upon the practitioner's own admission that the facts alleged in charges 1, 2, 3, 4 and 5 were proved. The Tribunal found that charges 1, 2, 3 and 4 constituted unprofessional conduct and found the practitioner guilty of unprofessional conduct on those charges. The Tribunal further found that charge No. 5 constituted professional misconduct and the practitioner was found guilty of professional misconduct on that charge.

The Tribunal fined the practitioner the sum of \$7,500 on all charges to be paid by monthly instalments of \$750 commencing on June 5, 1998 and monthly thereafter until the full amount is paid. The Tribunal further ordered that the practitioner pay the costs of the Queensland Law Society Incorporated.

### **Reasons**

Apart from the normal matters taken into account in fixing penalties, the Tribunal noted the following:

- (i) the practitioner's plea of guilty;
- (ii) his undertaking not to charge professional costs in the estate matter;
- (iii) his contrition;
- (iv) there was no personal gain to the practitioner; and
- (v) there was never any suggestion of dishonesty on the practitioner's part.