

In the Matter of Lindsay Terence Lawrence

Case Number: SCT/100
Date of Hearing: 18 August 2003
Appearing Before: Mr P Short (Presiding Member/Practitioner Member)
Mr P Mullins (Practitioner Member)
Dr J Lamont (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Suspended for a period of six months to commence at midnight on Friday 19 September 2003

Charge 1

1. The Solicitor failed to respond to correspondence from the Queensland Law Society ('Society').

Particulars

- 1.1 At all material times:

- (a) Nicolas Francis Masinello was:

- (i) a Manager, Client Relations Centre of the Society; and

- (b) Keith William Thompson was:

- (i) the Director, Professional Standards of the Society; and

- (ii) authorised by the Council to give a Notice pursuant to section 5H of the *Queensland Law Society Act* ('Act') to the Solicitor on its behalf.

- 1.2 By letter dated 20 March 2002 the Society required the Solicitor, to give it an explanation within 14 days of the matters raised in its letter of 12 December 2001, which was followed up with further requests by letter dated 16 January, 15 February and 27 February 2002.

- 1.3 On 11 April 2002 the Society caused a Notice, purportedly pursuant to section 5H of the *Queensland Law Society Act* ('Notice'), to be given to the Solicitor.

Particulars

At the time the Society sent the letter of 20 March 2002 Mr Nick Masinello was not authorized by the Council pursuant to section 5G of the Act to call upon the Solicitor to give an explanation.

- 1.4 The Solicitor failed to respond to letters in paragraph 1.2 or the Notice in paragraph 1.3.

Charge 2

2. The Solicitor failed to respond adequately to correspondence from the Society.

Particulars

- 2.1 At all material times

- (a) Nicolas Francis Masinello was:

- (i) a Manager, Client Relations Centre of the Society; and

- (b) Keith William Thompson was:

- (i) the Director, Professional Standards of the Society; and

- (ii) authorised by the Council to give a Notice pursuant to section 5H of the Act to the Solicitor on its behalf.

- 2.2 By letter dated 21 March 2002 the Society required the Solicitor to give it an explanation within 14 days of the matters raised in its letter of 17 January 2002 which was followed up with a further request by letter dated 20 February 2002.

- 2.3 On 22 April 2002 the Society caused a Notice, purportedly pursuant to section 5H of the *Queensland Law Society Act*, ('Notice') to be given to the Solicitor.

Particulars

At the time the Society sent the letter dated 21 March 2002 Mr Nick Masinello was not authorised by the Council pursuant to section 5G of the Act to call upon the Solicitor to give an explanation.

- 2.4 In a telephone conversation shortly before 8 May 2002 between the Solicitor and Mr Masinello, the Solicitor advised Mr Masinello that he intended to respond to the Society's correspondence.

- 2.5 By letters dated 8 and 20 May and 17 June 2002, the Society further requested a response to its correspondence.

- 2.6 The Solicitor failed to adequately respond to the letters in paragraphs 2.2 and 2.5, or the Notice in paragraph 2.3.

Charge 3

3. The Solicitor failed to respond within 14 days to a notice dated 7 March given to him by the Council of the Society pursuant to s5H of the *Queensland Law Society Act*.

Particulars

- 3.1 Keith William Thompson was:
 - (a) the Director of Professional Standards of the Society; and
 - (b) authorised by the Council to call upon the Solicitor to give an explanation pursuant to s5G, and to give a Notice pursuant to s5H of the Act to the Solicitor on its behalf.
- 3.2 By letter dated 9 October 2001 the Council required the Solicitor, pursuant to s5G of the *Queensland Law Society Act*, to give an explanation by 31 October 2002 in relation to a letter of complaint dated 28 September 2001 from SK.
- 3.3 By letters dated 29 November and 11 December 2001, and 23 January and 12 February 2002, the Society further requested the Solicitor's response to its letter dated 9 October 2001.
- 3.4 On 7 March 2002 the Council caused a notice pursuant to s5H of the *Queensland Law Society Act* (s5H Notice) to be given to the Solicitor.
- 3.5 On 24 April 2002 the Solicitor informed Mr Masinello of the Society that he would respond to the Society by 3 May 2002.
- 3.6 By letters dated 8 May and 20 May 2002 the Society again requested the Solicitor to respond to the Society's correspondence.
- 3.7 The Solicitor failed to respond to the s5H Notice within 14 days or at all.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr M J Burns of Counsel instructed by Messrs McCullough Robertson, Solicitors
- (b) For the Practitioner:
Mr P Sacre of Counsel instructed by Messrs Lawrence & Associates, Solicitors

Findings and Orders

1. The Tribunal dismisses the application by the respondent for the applicant to provide further particulars.
2. The Tribunal further dismisses the application of the respondent to strike out charges 1 and 2 for want of jurisdiction.
3. The Tribunal finds the charges set out in the Amended Notice of Charge filed by leave on 14 July 2003 proved and that each matter amounts to professional misconduct. The Tribunal finds the Practitioner guilty of professional misconduct.
4. The Tribunal suspends the Practitioner from practice as a Solicitor of the Supreme Court of Queensland for a period of six months to commence at midnight on Friday 19 September 2003.
5. The Tribunal orders that the Practitioner undertake and successfully complete the next available practice management course in its totality.
6. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society of and incidental to this application (excluding the costs of the hearing on 14 July 2003) including the costs of the recorder and the Clerk, such costs to be agreed but failing agreement to be assessed by Monsour Legal Costs Pty Ltd.
7. In relation to the costs in respect of the hearing on 14 July 2003, the Tribunal orders that the Queensland Law Society Incorporated pay the Practitioner's costs.
8. The Tribunal allows the Practitioner until 31 December 2003 to pay the costs so ordered to be paid by him.

Reasons

Practitioner's Application for Particulars and Strike-out for want of Jurisdiction

The Tribunal dismisses the application for further particulars. We are satisfied the practitioner has been apprised with the nature of the case and sufficient particulars to ensure a fair hearing.

As to jurisdiction, we are satisfied that we have jurisdiction to hear the complaint as particularised and propose that the matter now proceed.

Charges and Penalty

The Queensland Law Society received three written complaints about the conduct of the practitioner L T Lawrence. The first charge relates to a complaint received about 22 November, 2001 from a Mr K on behalf of a company, the HPL, which resulted in the Queensland Law Society writing to the Practitioner on about 12 December, 2001, asking for an explanation.

The second about the same time from Mr R resulted in a similar request for explanation on about 17 January 2002; and the third on 28 September 2001 from a SK resulted in a similar request for an explanation on about 9 October 2001.

The basis of the complaints is not an issue before us, but for background it is sufficient to say that all three of the complaints seem to be capable of explanation and did not, at least from the explanation that is eventually given in the letter of 8 August 2003, seem to be matters of dishonesty.

The R complaint seems to result from the fee dispute, where they have not paid. The Mr K complaint results to fees Mr K paid to a mortgage broker, which the Practitioner says is not something that is of his concern; and the SK complaint seems to flow from an unusual speculative action undertaken for the sister of a barrister where the Practitioner says he was simply to supply a backsheet for the barrister pursuing his family's damages action.

The complaints appear on their face to relate to the solicitor the Practitioner in connection with his practice, and thus enliven the power of the Queensland Law Society to use its investigative powers.

The Law Society is obliged to investigate. How it proceeds is not prescribed. The evidence shows here it wrote a series of letters which required the practitioner to give an explanation in writing. If the Practitioner thought there was an excess of power sufficient to void the attempt to investigate, then he should have raised that serious matter in a serious way, mainly, in a formal written response to a formal written request.

Absence an excess of power, the clear obligation is to give an explanation, and if nothing is said in a written request, then a reasonable person, particularly a solicitor used to dealing in formality, would assume a written reply is necessary.

Then followed a remarkable series of letters of requests and various degrees of demands, about 23 letters in all, and some telephone requests. Eventually charges were filed on 25 June 2003, and after these were listed for hearing on Monday 18 August, the written response was written by the Practitioner on Friday 8 August. That is about 20 months after the first request.

In respect of charges 1 and 2, the practitioner in evidence before us today acknowledged that each time he spoke to Mr Masinello of the Society, Mr Masinello requested that he respond in writing to the Society's letters.

He acknowledged that, despite Mr Masinello's repeated requests, he failed to respond in writing to the letters the subject of charges 1 and 2 for a lengthy period.

These are serious charges, and we must be reasonably satisfied on the *Brigginshaw* test that the elements of the charges 1 and 2 are proven. In that regard we have the practitioner's own admissions that he failed to respond in writing to the Society's letters for what we consider to be an unreasonably lengthy period.

There can be no doubt at all he had a professional obligation to cooperate with the Law Society's investigations of the complaints the subject of charges 1 and 2 by responding in writing to the Society's letters.

He breached that professional obligation. We consider those breaches comprised in charges 1 and 2 amount to professional misconduct. The third charge is deemed to be professional misconduct.

Gentlemen, we have found the Practitioner guilty of professional misconduct and heard submissions on penalty. We are concerned that the Practitioner has faced and was convicted of similar charges in June 2002, and these charges largely repeat the previous conduct.

It is not a question of totality of sentencing, as Mr Sacre urges on us but, rather, the case of a repeat offender who has for a further 14 months after last appearing before this Tribunal neglected or refused to observe his obligations as a member of the legal profession and continued his stance that his professional obligations are secondary.

We have considered seriously the order of striking off, but after deliberation believe that the appropriate penalty is to suspend the Practitioner for a period of six months to commence at midnight on Friday 19 September 2003.

We also order that the Practitioner undertake and successfully complete the next available practice management course in its totality.

We have been somewhat influenced by the fact that none of the complaints seem to involve dishonesty, and we believe that a sentence of six months is appropriate rather than a striking off order, to allow the practitioner to reflect on his obligations and, in particular, to reflect on the comments made by this Tribunal when he was previously sentenced.