

In the Matter of Anthony Graham Lennon

Case No: SCT/64
Date of Hearing: 27 March 2002
Appearing Before: Ms C Endicott (Chairperson)
Mr M Byrom
Ms Isabelle Vallin-Thorpe (Lay Member)
Penalty: Fined \$1,500.00 and suspended from practice until 30 June 2002.

Charge 1

In breach of ss38, 39 and 44 of the *Queensland Law Society Act 1952* the practitioner practised as a solicitor in or about February 2000 without having at the time a certificate then in force issued to the practitioner by the secretary of the Society as referred to in s 38 of the *Queensland Law Society Act 1952* as amended.

Particulars

- 1.1 On 14 February 2000 TL contacted the receptionist of JW's, Barrister at Law and requested that JW appear for him in a matter that afternoon in the Magistrates Court at Cairns.
- 1.2 At or about 12 noon that day JW received a call from TL stating that he had a client, NAT who had a matter listed in the Magistrates Court that afternoon at 2.15pm. The nature of the matter was an enforcement application under the *Family Law Act*.
- 1.3 TL called on JW at her chambers shortly after with a manila folder containing various documents and discussed the matter with her. JW arranged to meet TL and his client at the Magistrates Court that afternoon. TL told JW and she saw that he had prepared a brief affidavit over the weekend which he proposed to be used at the hearing. TL met with JW at the court and introduced her to his client. TL would not go into the court room allegedly because he was not wearing a tie.
- 1.4 TL instructed JW she was to indicate to the court that she was instructed by BJ & Associates. JW did not rely on the affidavit material prepared by TL as she did not consider it addressed the relevant issues.
- 1.5 The matter was transferred to the Family Court of Australia in Cairns for hearing later that week on 18 February 2000.
- 1.6 JW informed TL she would need a conference in her chambers with his client which occurred on 16 February 2000 with JW, TL and his client.
- 1.7 Subsequently JW attempted to ring TL at BJ & Associates. There was an answering machine message to the effect that the office would be unattended for some days.
- 1.8 On another occasion JW's receptionist rang TL on another telephone number that JW had been given by TL. The phone was answered by another gentleman. There was a background noise that appeared to be a television such that JW's receptionist thought she had dialled TL's phone number. TL stated that it was not his phone number.
- 1.9 JW drafted affidavit material in response to the enforcement proceedings. The document was to have been loaded onto a floppy disc and collected by TL for printing, however, TL was unable to have it printed and it was printed out by JW.
- 1.10 TL and JW attended at the Family Court in Cairns on 18 February 2000. TL had his client swear to the affidavit. Consent orders were then negotiated and JW, TL and the client appeared before His Honour JB. The other party and his solicitor also appeared. JW indicated to His Honour that the matter had been resolved by consent.
- 1.11 TL requested that when JW prepared her fee note that she have her receptionist ring him and he would come and collect it.
- 1.12 The fee note sat in JW's chamber uncollected for some days. On 23 February 2000 JW wrote to TL and indicated in that letter a request as to whether or not she should have the brief and fee note forwarded to the office of BJ & Associates. JW believes that a further fax was sent to BJ & Associates asking what to do with the brief though she has not retained a copy of that fax. The brief and fee note were subsequently collected.
- 1.13 A document filed in the Family Court (a Form 8) which was prepared in JW's chamber showed in the appropriate space that NAT's Solicitor was BJ & Associates and in the space for "reference" noted "AL".
- 1.14 The records of the society show that:
 - (a) On or about 17 May 1999, BWJ & Associates wrote to the society and advised that the

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- practitioner would not continue in that firm's employment beyond 30 June 1999;
- (b) On or about 26 July 1999, BWJ & Associates wrote to the society and advised that TL was no longer in their employ; and
 - (c) The practitioner has not had a practising certificate since 30 June 1999.
 - (d) On 26 July 2000 the society had delivered personally to the practitioner a letter from the society forwarding a copy of the complaint received from JW and requesting a sufficient and satisfactory response.
 - (e) By letter dated 17 August to the society the practitioner requested that he be provided with the letter of complaint of JW that he may address same.
 - (f) On 15 September the society wrote to the practitioner at his address given in his letter of 17 August 2000 forwarding a copy of the complaint received from JW and requesting a sufficient and satisfactory response within 14 days.
 - (g) The society did not receive a response from the practitioner.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr Peter Ryan, solicitor of Biggs & Biggs, solicitors
- (b) For the practitioner:
Mr J T Bradshaw of counsel appeared amicus curiae for the practitioner. Mr Bradshaw appeared from Cairns by way of teleconference.

Findings and Orders:

1. The tribunal orders that the practitioner be suspended from practice until 30 June 2002.
2. The tribunal further orders that the practitioner pay a penalty of \$1,500.00 to the Fund.
3. The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated, including the costs of the clerk and the recorder, to be agreed and, failing agreement, to be assessed by Mr Monsour, cost assessor.

4. The tribunal further orders that the practitioner have 3 months to pay the penalty and costs.

Reasons

The practitioner has been charged that he practised as a solicitor in February 2000 without having a practising certificate, as required by s38 of the *Queensland Law Society Act 1952*.

The practitioner, through his counsel, admits the contents of the charge and has admitted that he is guilty as charged.

The tribunal finds that the charge has been proven and that the conduct of the practitioner constitutes professional misconduct.

The tribunal finds the practitioner guilty of professional misconduct.

The practitioner has submitted that the tribunal is unable to apply a penalty in this case as provided by s6R of the *Queensland Law Society Act 1952* and to do so would contravene the provisions of s16 of the *Criminal Code*, which prevents a person being punished twice for the same offence.

The tribunal does not accept this argument as the practitioner has not been previously punished for this offence and any penalty imposed by this tribunal will be the first and possibly only penalty imposed for the conduct, which is the subject of this charge.

The tribunal accepts that the practitioner's conduct was an isolated act and was done in response to a request by a person who was unable to obtain representation from other solicitors for an urgent matter.

Nevertheless, the practitioner's conduct was not completely forthright as he did not inform JW of counsel of the reasons why he should not be acting as a solicitor in the matter and, by his omissions, he misled JW into the belief that the practitioner was able to act as her instructing solicitor in the matter.

The tribunal considers that the conduct would not be sufficiently penalised by the imposition of a financial penalty alone.

The practitioner's conduct warrants a suspension from practice.

The tribunal takes into account the fact that the practitioner has been effectively prevented from applying for a practising certificate for some period of time while this charge has been investigated by the Law Society.