

In the Matter of Alan Raymond Lindsay

Case Number: SCT/6251
Date of Hearing: 23 April 2002
Appearing Before: Ms C C Endicott (Chairperson)
Mr M Byrom (Practitioner Member)
Ms E Jordan (Lay Member)
Penalty: Struck Off

Charges

1. On or about 25 January 2000 in relation to an application by him to his bank for financial accommodation, the Solicitor provided and relied upon a share portfolio valuation on the letterhead of XX Stockbrokers which document he knew to be a forgery.

Particulars

- (a) At all material times the Solicitor was a Solicitor of the Supreme Court of Queensland having been admitted on 16 August 1977.
- (b) In or about January 2000 the Solicitor made application to his bank to increase his existing overdraft facility by \$16,000 from \$25,000 to \$41,000 to cover the costs associated with obtaining employment and relocating to Brisbane.
- (c) In or about January 2000, the Solicitor's wife, on behalf of her and the Solicitor, made application to the bank for a reduction in the monthly repayment on a home loan in the name of the Solicitor and his wife.
- (d) In relation to both applications referred to in paragraphs 1(b) and 1(c), the Solicitor forwarded to the bank by facsimile transmission on 25 January 2000 a share portfolio valuation on the letterhead of XX Stockbrokers which valuation stated that the Solicitor held a share portfolio comprising Australian Equities valued at \$181,470 franked to 100%.
- (e) At the time of sending the said portfolio valuation to the bank on 25 January 2000, the Solicitor knew that:
 - (i) he did not hold such a share portfolio;
 - (ii) he was not a client of XX Stockbrokers; and
 - (iii) the said portfolio valuation was a forgery.
- (f) The bank relied upon the said portfolio valuation in approving both finance applications in paragraphs 1(b) and 1(c).

2. In breach of section 5H of Queensland Law Society Act 1952 the Solicitor failed to provide a sufficient and satisfactory written explanation of the matters referred to in a complaint by his bank.

Particulars

- (a) At all material times the Solicitor was a Solicitor of the Supreme Court of Queensland having been admitted on 16 August 1977.
- (b) By written complaint dated 29 March 2001 received by the Queensland Law Society Incorporated ('the Society') on 2 April 2001, the solicitor's bank complained about the Solicitor. (c) By letter dated 20 April 2001, the Society, under the hand of its Secretary, forwarded a copy of the complaint to the Solicitor and requested that he forward a sufficient and satisfactory written explanation of the matters referred to therein by 15 May 2001. The Solicitor did not reply to that letter.
- (d) By further letter dated 16 May 2001, the Society wrote to the Solicitor seeking a reply to its letter of 20 April 2001 by 24 May 2001. The Solicitor did not reply to that letter.
- (e) On 1 June 2001, the Society, under the hand of its Secretary, forwarded to the Solicitor by registered post at his last known address, a Notice pursuant to section 5H of Queensland Law Society Act 1952 (as amended). That notice was returned to the Society undelivered.
- (f) By further letter dated 3 July 2001, the Society forwarded another copy of the said complaint to the said Solicitor at his new address and requested that he forward a sufficient and satisfactory written explanation of the matters referred to therein by 24 July 2001. The Solicitor did not reply to that letter.
- (g) By further letter dated 27 July 2001 the Society wrote to the Solicitor seeking a reply to its letter of 3 July 2001 by 6 August 2001. The Solicitor did not reply to that letter.
- (h) By further letter dated 5 September 2001 the Society wrote to the Solicitor enclosing copies of its earlier letters of 3 July 2001 (with enclosures) and 27 July 2001 and advised that unless it received a reply by 11 September 2001 a notice would be issued pursuant to section 5H of Queensland Law Society Act 1952. The Solicitor did not reply to that letter.
- (i) On 17 September 2001, the Society, under the hand of its Director of Professional Standards, forwarded to the Solicitor a Notice under section 5H of Queensland Law Society Act 1952 notifying him that if his failure to provide an explanation in writing of the matters referred to in the said complaint continued for a period of 14 days, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not providing the explanation.
- (j) By letter dated 1 October 2001, the Solicitor wrote to the Society seeking an extension of 14 days from 1 October 2001 to forward his reply.
- (k) By letter dated 2 October 2001 the Society wrote to the Solicitor advising that no extension under section 5H could be granted.

(l) The Solicitor failed to respond to the section 5H Notice within 14 days of its receipt namely by 2 October 2001 or within the said 14 day extended period the Solicitor sought in his letter to the Society dated 1 October 2001.

(m) By further letter dated 24 October 2001, the Society again wrote to the Solicitor seeking his written explanation of the matters the subject of the section 5H Notice but no response has been received by the Society.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr D G Searles, Solicitor of Messrs McCullough Robertson Solicitors.

(b) For the Practitioner:
The Practitioner appeared in person.

Findings and Orders

1. The Tribunal finds that the conduct alleged in the Notice of charge and as admitted has been proved and constitutes unprofessional conduct in relation to Charge 1 and professional misconduct in relation to Charge 2.
2. The Tribunal finds the practitioner guilty of unprofessional conduct and professional misconduct.
3. The Tribunal finds that the Practitioner is not a fit and proper person to remain in practice as a solicitor and orders that the name of the Practitioner be struck from the Roll of Solicitors of the Supreme Court of Queensland.
4. The Tribunal further orders by consent that the Practitioner pay the costs of the Queensland Law Society Incorporated incidental to this notice of charge, including the costs of the recorder and of the clerk to the Tribunal as assessed by Monsour Legal costs Pty Ltd noting that both parties have agreed to be bound by that assessment.

Reasons

The practitioner has been charged with two counts arising over circumstances that occurred in the year 2000, when the practitioner was in practice in Townsville. Faced with the financial consequence of the breakdown of his marriage, the practitioner had exceeded his personal overdraft facility with his bank. To regularise the extended credit position, the practitioner represented to his bank that he had shareholding to a value in excess of \$180,000. He supported that representation by forging a document which he gave to the bank. The bank later complained to the Queensland Law Society about the forged document, and the Society asked the practitioner to explain his conduct. The practitioner ignored the correspondence from the Queensland Law Society. The Society then issued a notice under S5H of the Queensland Law Society Act. The practitioner did not respond to that notice. The practitioner today admits the conduct which is the subject of the Charges and admits that the conduct constitutes professional misconduct. In making this concession, he noted that the conduct as to the forged document arose from his personal affairs and was not conduct arising from his practice in Townsville.

The Tribunal considers that the conduct admitted has been proved and constitutes unprofessional conduct in relation to Charge 1, being a serious departure from the standard of conduct expected from legal practitioners in the conduct of their own affairs, and the Tribunal considers that the conduct admitted as to Charge 2 has been proven and constitutes professional misconduct. Good fame and character is a prerequisite of ethical fitness to practise as a solicitor. This Tribunal is charged with the responsibility of considering what response should be made to the proven unprofessional conduct and the professional misconduct found against this practitioner.

The Tribunal has taken into account the unfortunate personal circumstances that resulted in the isolated act of forgery, but also notes that the practitioner ignored the Queensland Law Society for an extended period of time when the complaint made against him was under investigation. While the practitioner points to medical difficulties existing during the period of time that the conduct complained of took place, the practitioner did not submit that his medical condition was the cause of his conduct. The practitioner has a long and distinguished legal career and has a commendable record of community service in Townsville. However, the Tribunal is responsible for protecting the interests of the public in relation to the conduct of legal practitioners, and particularly must protect the public when the conduct of practitioners falls considerably short of the standard expected from the profession.

The Society referred the Tribunal to two cases involving practitioners D and S. On the basis of these decisions, the Tribunal asserts that the test to be applied by this Tribunal is whether the practitioner is a fit and proper person to remain in the practice of a solicitor. To that extent, it is fitting to quote from the decision of D, where the Court said:

"Generally speaking, the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises."

The practitioner has requested that the Tribunal consider a period of suspension from practice. The Tribunal has given consideration to that request but has decided that a suspension would not be appropriate in this case unless there was evidence that the practitioner would be a fit and proper person to practise as a solicitor

at the end of his period of suspension. No evidence has been presented to the Tribunal to enable us to reach that conclusion.

In view of the findings by the Tribunal, and in view of the comments of the Court in relation to D and S, this Tribunal finds that the practitioner is not a fit and proper person to remain in practice as a solicitor; and orders that the name of the practitioner be struck from the Roll of Solicitors.