

In the Matter of Robert Maxwell Lockhart

Case Number: SCT/47
Date of Hearing: 3 July 2003
Appearing Before: Ms C C Endicott
(Chairperson/Practitioner Member)
Mr M Conroy (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Struck off

Charges

1. The practitioner misappropriated from PHS sums totalling \$206,250.71.

Particulars

- (a) The practitioner caused to be drawn by PHS 25 cheques in amounts totalling \$111,895.86 drawn in favour of PJM;
- (b) The practitioner caused to be drawn by PHS the following cheques:

Cheque No.	Date	Payee	Amount
200770	18.05.98	CSD	\$21,975.00
200771	18.05.98	DS	\$7,800.00
200772	18.05.98	JW Trust Account	\$10,000.00
Total			\$39,775.00

which cheques were banked into the trust account of JW, solicitor, and the proceeds thereof applied as to the sum of \$38,828.22 in reduction of a debt owed by PJM and PMM.

- (c) The practitioner caused to be drawn by PHS the following cheques:

Cheque No.	Date	Payee	Amount
01159	19.12.97	JW Trust Account	\$10,075.00
200661	02.03.98	JW	\$15,024.60
Total			\$25,099.60

which cheques were banked into the trust account of JW, solicitor, credited to the matter *M ats CPL & ors* and the proceeds thereof applied as to the sum of \$24,236.85 by payment to CPL and others.

- (d) The practitioner caused to be drawn by PHS the following cheques:

Cheque No.	Date	Payee	Amount
100205	12.01.98	JW	\$10,675.00
200640	17.02.98	JW Trust Account	\$18,805.25
Total			\$29,480.25

which cheques were banked into the trust account of JW, solicitor, credited to *RL – Private Matters – File number: x* – and the proceeds thereof applied as to the sum of \$16,600.00 in making payments to or on behalf of PJM and PMM and as to the sum of \$12,805.25 by payment to the practitioner.

- (e) PHS has had no dealings with PJM and/or PMM and was not, at any time, indebted to them or either of them.
2. The practitioner made false representations to PJM as to the progress of matters in which the practitioner was retained by PJM to act as his solicitor.

Particulars

- (a) In relation to litigation instituted on behalf of PJM against CH (action number 2369 of 1992 in the District Court, Brisbane) the practitioner represented:
 - (i) by facsimile dated 9 February 1998 addressed to PJM, that judgment had been “served on A (*sic*)”, Mr A having been the solicitor acting for CH;
 - (ii) by letter dated 17 November 1998 addressed to PJM, that:
 - (A) the sum of \$7,000.00 had been recovered in respect of costs paid by PJM to ME;
 - (B) the sum of \$2,664.00 had been recovered by way of interest;
 - (C) “the moneys have been received from CH and the action is now at an end”,when, in fact:
 - (iii) leave to proceed in that action had been refused on 7 March 1997;

- (iv) a further District Court plaint (being No. 1014 of 1997) had been issued on 14 March 1997, but had not been served; and
- (v) nothing had been recovered from CH.
- (b) In relation to litigation concerning the balance proceeds of sale of certain units and the recovery of moneys owed to PJM by one D, the practitioner represented in the letter dated 17 November 1998 that "judgment will be given on 20 November in respect of K (*sic*) and others" when, in fact:
 - (i) no proceedings had been instituted,
 - (ii) a draft plaint had been prepared but not issued,
 - (iii) no judgment was expected to be delivered on 20 November 1998 or at all.
- (c) In relation to litigation against one C, the practitioner represented by the letter dated 17 November 1998 that PJM was entitled to recover the sum of \$172,000.00, payable on 16 December 1998, plus interest and costs and that there were no steps to be taken other than recovery of the judgment sum when, in fact, no proceedings had been instituted against C.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr Brian Bartley of Brian Bartley & Associates, Solicitors
- (b) For the Practitioner:
There was no appearance on behalf of the Practitioner

Findings and Orders

1. The Tribunal finds the matters set out in paragraph 1 and 2 of the Notice of Charge proved.
2. The Tribunal finds the Practitioner guilty of these two charges and accordingly guilty of professional misconduct.
3. The Tribunal orders that the Practitioner be struck of the roll of solicitors of the Supreme Court of Queensland.
4. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated and the costs of the Clerk and the recorder of these proceedings, including any reserved costs, to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

The practitioner has been charged with misappropriation of a sum in excess of \$200,000 and with making false representations to the client about the progress of matters in which the practitioner had been retained as the solicitor.

The practitioner has not appeared today; nor has he filed any affidavit responding to these Charges. However, there was evidence before the Tribunal that the practitioner is aware of today's hearing, and we refer in particular to the affidavit of Mr Brian Bartley and to the letter from the practitioner's current solicitors exhibited to that affidavit.

There is evidence in the affidavits produced by the Society, particularly the affidavit of Mr Wil Melzer that the practitioner made admissions to him of the false representations he had made to PJM, and also admissions that payments had been made at the practitioner's directions by PHS to PJM.

The practitioner has also recently pleaded guilty to a criminal charge of misappropriation involving the amounts the subject of this Charge and in relation to other matters.

The Tribunal is satisfied that the evidence adduced by the Society establishes that the practitioner did make the misappropriations referred to in the Charge, and is satisfied that the practitioner made the false representations to his client as alleged in the Charge.

The Tribunal finds the practitioner guilty of these two charges.

In making these findings, the Tribunal also finds that the practitioner has been guilty of professional misconduct.

The Queensland Law Society has submitted that the only outcome to be applied to this practitioner would be to strike him off the Roll of Solicitors. The Tribunal is mindful of its responsibilities to the public to protect them against the serious misconduct of solicitors. The Tribunal agrees that the disciplinary outcome urged by the Society is the appropriate remedy.