

In the Matter of Maxwell James Mead

Case No: SC378
Date of Hearing: 18 September 1996
Appearing Before: Mr T M Treston (Chairman)
Mr A W Watt
Ms C C Endicott
Penalty: Struck Off

Charges

On 18 September 1996, the Statutory Committee heard charges laid by the Council of the Queensland Law Society against **MAXWELL JAMES MEAD** by application dated 3 July 1996. The practitioner faced the following charges.

1. He caused money to be withdrawn from his Trust Account and transferred to his General Account where the withdrawals were not made for a purpose authorised by Section 8(1) of the *Trust Accounts Act 1973* and as a result the monies became intermingled with his own property.
2. He borrowed money from his clients in breach of Rule 86.
3. He preferred his own interests to those of his client and failed to give his clients proper advice.
4. He acted in breach of Rule 85 of the Rules of the Queensland Law Society.
5. He failed to protect the interests of a lending client by failing to ensure security was given by a borrower.
6. He caused monies to be withdrawn from his Trust Account and transferred to his General Account for his benefit in circumstances in which the withdrawals were not made for a purpose authorised by Section 8(1) of the *Trust Accounts Act 1973*.
7. He breached an Undertaking to another practitioner.
8. He caused monies to be withdrawn from his Trust Account and transferred to his general Account in purported reimbursement of monies expended by him on account of disbursements when in fact, as the practitioner well knew, such disbursements had not been expended.
9. He received monies from a client in the sum of \$85,457.85 for a certain purpose but contrary to Section 8(1) of the *Trust Accounts Act*, the said sum was used for another purpose.
10. He was in breach of Rule 85 of the Rules of the Queensland Law Society, the practitioner acted for both parties in a loan transaction.
11. He failed to take reasonable steps to protect the interests of the parties to a loan transaction.
12. He received the sum of \$ 1 00,000 for a particular purpose, used those funds for another purpose in breach of Section 8(1) of the *Trust Accounts Act*.

13. He was in breach of Rule 85 of the Rules of the Queensland Law Society, acted for both parties in a loan transaction.
14. He failed to take reasonable steps to protect the interests of the parties to a loan transaction.
15. He used the sum of \$50,000 obtained from a client for another purpose in breach of Section 8(1) of the *Trust Accounts Act*.
16. He was in breach of Rule 85, acted for both parties in a loan transaction.
17. He failed to take reasonable steps to protect the interest of the parties to a loan.
18. He borrowed money from a client in breach of Rule 86 of the Rules of the Queensland Law Society.

The Society was represented by a solicitor and Mr Mead was represented by Counsel instructed by solicitors. Affidavit evidence was filed by the Society. No evidence was called by the parties at the hearing. The solicitor for the Society and Counsel for the practitioner addressed the Committee. Mr Mead, through his Counsel, admitted all of the charges except for Charge 1, 6 and 8.

Findings & Orders

The Committee found the facts set out in all of the charges proved. The Committee found that those matters constitute professional misconduct and the Committee found the practitioner guilty of professional misconduct.

The Committee ordered that the practitioner be suspended from practice as a solicitor of the Supreme Court of Queensland until 30 June 1999. A stay of the Order was granted until 18 October 1996 upon the solicitor's undertaking not to accept any new instructions from that day. The Committee also noted that the Law Society was already a signatory to the solicitor's Trust Account. The practitioner was ordered to pay the Society's costs including the costs of the shorthand writer and the Clerk to the Statutory Committee.

Appeal

Mr Mead had previously been found guilty of professional misconduct by the Statutory Committee on 28 March 1995. The charges involved in that matter were similar to the charges at the second hearing and in the circumstances, the Society decided to appeal against the penalty imposed by the Statutory Committee. On 9 April 1997 the Court of Appeal (President Fitzgerald, justices McPherson and Williams) heard the Appeal.

On 22 April 1997, the judgment of the Court was delivered and the Appeal was allowed. The Order that Mr Mead be suspended from practice was set aside and it was ordered that he be struck off the roll of solicitors of the Supreme Court. He was also ordered to pay the Society's costs.

The judgment in part read, 'the respondent made no restitution and gave no indication of remorse. Nor was any evidence given seeking to explain his conduct. However, it was submitted that he cooperated and offered no challenge

to the charges against him. Reliance was placed upon the circumstances that the respondent had practised as a solicitor in his own business or firm for a substantial period as a factor which indicated that his fitness to practice would be re-established after the period of suspension imposed, which it was argued was consistent with a sound exercise of discretion by the Statutory Committee.

‘The conduct particularised establishes that in the months following his first being dealt with by the Statutory Committee, the respondent acted in blatant disregard of the standards of professional behaviour expected of him. In light of that there is no proper basis for concluding that the respondent would be fit to resume practice or apply for a practising certificate after serving a period of suspension from 18 October 1996 until 30 June 1999.

In *Mellifont v The Queensland Law Society Incorporated* (1981) Qd. R. 17 Andrews J (with the concurrence of Connolly J) said at 30:

‘The public interest calls for effective vigilance over members of the profession and its standards of professional behaviour and great concern to ensure as well as possible that the public may confidently place their business and affairs in its hands.’

‘That largely reflects what was said by Hutley JA in *Law Society of New South Wales v Moulton* (1981) 2 NSWLR 736 at 751. Whilst a solicitor remains on the roll he is being publicly held out by this court as a person to whom a citizen may entrust his business affairs.

‘The conduct of the respondent demonstrated by the findings of the Statutory Committee on 28 March 1995 and again on 18 September 1996 clearly establishes that he is no longer a fit and proper person to be on the roll of solicitors’.