

undertakings.

Draft Letter to HD

"On review of my files, and in further reference to my letter to you of 11 June 1997, with regard to the Estate of WLB, it is clear that I should not have charged you the further sum of \$5,000.00 on that file.

I now enclose a cheque payable to you, as the sole beneficiary of the estate, in the amount of \$5,000.00, plus interest at the rate of 6%, a total of \$_____.

I confirm I have received payment in full from you for all legal work on both your mother and your father's estate files (i.e. Estate of HB and Estate of WLB)."

Reasons

With respect to the preliminary applications 1 and 2 made by the solicitor for the practitioner, the Tribunal considered the submissions made by both parties and some of the authorities cited to it.

The Tribunal is not convinced that because of the confidential nature of evidence, or because of any other matter, the hearing should be heard in private.

With respect to the preliminary application number 3, the Tribunal is of the opinion that it does not have any jurisdiction to restrict the publication and filing of its final Order. The Tribunal is firmly of the opinion that Section 6L of the Queensland Law Society Act does not apply to its final Order.

The Tribunal granted leave to the Queensland Law Society Incorporated to withdraw from Notice of Charge No. 4, Charges numbered 4 and 8 and has allowed an amendment to Charge No. 7.

The practitioner has pleaded guilty to Charges 1, 2, 3, 5, 6, 7 (as amended), 9 and 10 in Notice of Charge No. 4 and to Charge No. 1 in Notice of Charge No. 20. He has admitted the facts alleged in the particulars supporting each of the charges. He has admitted that he is guilty of professional misconduct.

The facts supporting the charges include breaches of the Trust Accounts Act and Regulations, the writing of a letter containing false and misleading representations, borrowing funds from clients without compliance with Rule 86 of the Queensland Law Society, and breaching an undertaking given to this Tribunal.

All of the charges are serious, and collectively it is difficult not to order a suspension. However, the Tribunal has taken into account that for the practitioner, being a sole practitioner, a suspension even for a short period could well result in the loss of the practice.

The parties have by agreement tendered to the Tribunal undertakings, which would permit the practice to continue, but at the same time be conducted in a manner, which would protect the clients and the public.

The practitioner in his affidavit (paragraph 96) has sworn that he is prepared to consent to an order embracing these undertakings, and through his solicitor he has signed a copy of the undertakings (the signed copy of which will be held by the Tribunal).

Solicitors Complaints Tribunal

In the Matter of Practitioner X

Case No: SCT/18
Date of Hearing: 8 September 1999
Appearing Before: Mr J S P O'Keeffe (Chairperson)
Mr T M Treston
Ms D A Wilson (Lay Member)
Penalty: Fined \$25,000.00

Charges

1. That the practitioner did, in the matter of the Estate of EFW (deceased), charge excessive fees for the provision

of services in relation to the practitioner's practice.

Particulars

- (a) in the matter of the said Estate, the practitioner, as solicitor for and executor of the estate, did, during the period 24 October 1996 to 24 April 1998, charge professional fees totalling the sum of \$39,260.00;
- (b) the practitioner caused the transfer of estate funds in the sum of \$39,260.00 from his trust account in payment of the said fees;
- (c) the said sum of \$39,260.00 was charged in circumstances where:
 - (i) a reasonable sum for professional fees for the services rendered by the practitioner in

relation to the administration of the said estate during the said period was substantially less than \$39,260; and

- (ii) diverse interim accounts totalling the said sum were produced by the practitioner during the said period, notwithstanding that for various of the periods covered by the interim accounts, the practitioner's file records do not evidence the carrying out of sufficient work as to reasonably support the level of fees charged in the interim accounts.

2. That the practitioner did, in the matters of the Estate of RAV (deceased) and in the matter of HFV re Affairs, charge excessive fees for the provision of services in relation to the practitioner's practice.

Particulars

- (a) in the matter of the Estate of RAV (deceased), the practitioner, as solicitor for the executrix, HFV, did, on 19 September 1996, render to the executrix a memorandum of costs and outlays for finalisation of the estate of the deceased, who had died on 21 June 1996;
- (b) the practitioner was appointed attorney for HFV by an enduring power of attorney dated 8 December 1995;
- (c) in June/July 1997, by accounts dated 23 June 1997, 8 July 1997 and 25 July 1997 respectively, the practitioner charged his client, HFV, further professional fees of \$3,050.00 for managing the estate of the deceased;
- (d) during the period 30 May 1997 to 17 February 1998, the practitioner charged HFV professional fees of \$30,650.00 for managing or administering her affairs as her attorney.
- (e) the practitioner caused the transfer of funds in the sum of \$33,700.00 held on behalf of HFV from his trust account in payment of the said fees;
- (f) the said sum of \$33,700.00 particularised in paragraphs (c) and (d) above was charged in circumstances where:-
 - (i) the practitioner had no lawful entitlement to be paid any professional fees in relation to his management and administration of the affairs of HFV as her attorney;
 - (ii) further or in the alternative to particular (f)(i),

a reasonable sum for professional fees for the services rendered by the practitioner in relation to the administration of the said estate and in relation to his management and administration of the affairs of HFV as her attorney, was substantially less than \$33,700.00; and

- (iii) further or in the alternative to particular f(i), diverse interim accounts totalling the said sum were produced by the practitioner during the said period, notwithstanding that for various of the periods covered by the interim accounts, the practitioner's file records do not evidence the carrying out of sufficient work as to reasonably support the level of fees charged in the interim accounts.

3. That the practitioner, being a solicitor and trustee of property, namely clients' trust moneys, dealt with that property in breach of the terms of the trust and in breach of Section 7 of the Trust Accounts Act.

Particulars

- (a) (i) on each of 15 February 1999, 19 February 1999 and 26 February 1999 respectively, the practitioner received trust moneys, being the sum of \$50.00 cash from his client, Mr L (being a total of \$150.00), which moneys the practitioner failed to pay into his trust account, in breach of the provisions of Section 7 of the Trust Accounts Act;
 - (ii) the said moneys were to be applied by the practitioner in reduction of an indebtedness of Mr L to the Queensland Department of Main Roads. The moneys were not so applied;
 - (iii) the trust deficiency was restored on 15 March 1999.
 - (b) (i) on 18 February 1999, trust moneys in the sum of \$107.00, the property of the practitioner's client, Mrs B, were wrongfully paid directly into the practitioner's general account, in breach of Section 7 of the Trust Accounts Act, and without the practitioner having any lawful entitlement thereto;
 - (ii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use. The said trust deficiency was restored on 30 March 1999.
4. That the practitioner, being a solicitor and trustee of

property, namely clients' trust moneys, dealt with that property in breach of the terms of the trust and in breach of Section 7 of the Trust Accounts Act by, without authority, inter-mingling the property with his own property and thereby applied the same to his own use and benefit.

Particulars

- (a) (i) on 27 January 1999, the practitioner issued a bill of costs and outlays in the sum of \$300.00 (costs \$280.00) in relation to the matter of the Estate of C;
- (ii) on 27 January 1999, the practitioner paid trust moneys in the sum of \$300.00 directly into his general account without any written authority to do so and otherwise in breach of Section 7 of the Trust Accounts Act.
- (iii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use until the expiry of the period of one month referred to in Section 8(1)(c)(ii) of the Act.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr R G Perrett, solicitor of Clayton Utz, Solicitors.
- (b) For the practitioner:
Ms E M O'Reilly, of Senior Counsel, instructed by Deacons Graham & James, Solicitors.

Findings and Orders

1. The Tribunal finds that collectively Charges 1, 2, 3 and 4 constitute professional misconduct. The Tribunal finds the practitioner guilty of professional misconduct.
2. Upon reliance of the undertakings given by the practitioner through his Counsel to pay the major part of the moneys overcharged within a period of nine (9) months, and regarding independent representation of HFV and regarding supervision of his practice and education, the Tribunal orders that the practitioner pay a penalty of \$25,000.00 to the Fund, such payment to be made between 8 June 2000 and 8 October 2000.
3. The Tribunal further orders that the costs of the Queensland Law Society Incorporated in respect of these proceedings, with the exception of the reserved costs relating to the issue of the Attendance Notice addressed to the Commonwealth Bank of Australia and of the

adjournment on 3 August 1999 and any costs relating to the inadmissible material, be paid by the practitioner, such costs to be agreed upon, or failing agreement, to be fixed as assessed by Monsour Legal Costs Pty Ltd.

4. Pursuant to Section 6L(4) of the Queensland Law Society Act 1952, the Tribunal orders that the report of Dr A dated 30 April 1999 (Exhibit "2") not be available for publication until further ordered.
5. The Tribunal orders that the exhibits be available for uplifting at the office of the clerk to the Tribunal at the expiration of the period for the appeal, or, if there is an appeal, at the time when the appeal has been disposed of.

Undertakings given by Practitioner

The practitioner gave the following undertakings:

1. The practitioner undertakes to refund the following amounts by 8 June 2000:
 - 1.1 \$25,000.00 to the Estate of EFW.
 - 1.2 \$18,500.00 to HFV.
 - 1.3 \$2,920.00 to the Estate of RAV.
2. The practitioner undertakes that he will exercise his powers as attorney for HFV to appoint an independent person – an experienced estates practitioner, to represent HFV in relation to the question of any and all professional fees payable concerning HFV's affairs, this person to be a person recommended by R G Hancock of Deacons Graham & James, such appointment to be made within one (1) month.
3. The practitioner further undertakes to give all reasonable co-operation to the appointee.
4. The practitioner further undertakes to abide by the appointee's decisions respecting professional fees in the matter, subject to the practitioner being entitled to exercise such rights of review as are open to legal practitioners in connection with the assessment of professional fees.
5. The practitioner further undertakes to pay the reasonable professional costs incurred by the appointee.
6. The practitioner agrees to have his practice supervised in the following manner until 8 September 2001:
 - 6.1 By a senior practitioner to be nominated by the practitioner and approved by the Secretary of the Society (and in default of agreement as nominated by the Tribunal) attending at the practitioner's practice for a minimum of two (2) hours and a

maximum of four (4) hours per week, to be given such access to files as he or she requires, and his or her costs to be met by the practitioner.

- 6.2 The practitioner to request the supervisor to provide a report to the Society monthly for the first year and quarterly for the second year.
7. The practitioner undertakes to consult monthly with Dr A (or at other intervals as advised by Dr A).
8. The practitioner requests and irrevocably authorises Dr A (or such alternate psychiatrist in lieu of Dr A as may be agreed with the Council of the Society) to provide a six (6) monthly written report to the Council of the Society with respect to the practitioner's ongoing treatment, condition and medical fitness to practise for a period of two (2) years or until earlier release from this undertaking by resolution of the Council of the Society.
9. The practitioner undertakes to enrol in and diligently attend the Practice Management Course to be conducted by the Society commencing in February 2000.

Reasons

The charges have been admitted by the practitioner and the

only matter for the Tribunal to determine is penalty.

The Queensland Law Society Incorporated has acknowledged that there is no suggestion of fraud or dishonesty.

The practitioner has admitted all charges. He has also admitted the particulars of these charges with some minor exceptions.

The total amount overcharged is substantial. The practitioner has given an undertaking to this Tribunal through his Counsel to pay the major part of the moneys overcharged within a period of nine (9) months. He has also given an undertaking to this Tribunal through his Counsel regarding independent representation of HFV.

The Queensland Law Society Incorporated has submitted that a suspension is appropriate. Counsel for the practitioner has submitted that a fine is more appropriate. The Tribunal in normal circumstances would be inclined to suspend the practitioner, however, it is concerned that a suspension could result in the inability of the practitioner to repay the persons adversely affected, as detailed in Charges 1 and 2.

The practitioner, through his Counsel, has given to the Tribunal undertakings regarding supervision of his practice and education. Upon reliance of these undertakings, and in the interests of the intended recipients of the payments, the Tribunal has decided to order that the practitioner pay a monetary penalty.

Solicitors Complaints Tribunal

In the Matter of Practitioner X

Case No: SCT/23
Date of Hearing: 22 September 1999
Appearing Before: Mr G A Murphy (Chairperson)
Mr G Fox
Mrs M Greene (Lay Member)
Penalty: Suspension – Six (6) months (the operation of which is suspended so long as Practitioner X complies with his undertakings)

Charges

1. That the practitioner has significantly delayed acting in the administration of the estate of ABC.

Particulars

- (a) Until 12 May 1998, the practitioner acted for the sole executor of the estate of ABC.
- (b) On 12 May 1998, Solicitor Y forwarded to the practitioner the executor's authority directed to the practitioner authorising the release of the ABC estate files to Solicitor Y.
- (c) On 22 June 1998, Solicitor Y requested that the practitioner provide an accounting of estate funds as a demand had been received from the life tenant of the estate.
- (d) On 31 July 1998 Solicitor Y received certain files relating to the ABC estate. The files did not contain any trust account or investment records.
- (e) On 5 August 1998, Solicitor Y wrote to the practitioner alleging various deficiencies in estate investments and accounting and requested that the practitioner forward copies of his trust and investment accounts in relation to the ABC estate.