

In the Matter of Terence Robert Puryer

Case No: SCT/77
Date of Hearing: 17 September 2002
Appearing Before: Mr P Cooper (Chairperson)
Mr M Conroy (Practitioner Member)
Ms E Jordan (Lay Member)
Penalty: Suspended from practice for 12 months from 17 October 2002

Charge 1

1. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he:

- (a) in breach of his duty as a solicitor; and/or
- (b) in breach of his duty to maintain reasonable standards of competence or diligence;

failed, within a reasonable time after being requested in writing by his client to do so, to render to the client a bill of costs covering all work for that client to which such request related.

Particulars

- (a) In connection with the matter of Mr W:
 - (i) Under cover of a letter dated 8 February 2001 the practitioner rendered a memorandum of costs to his client, Mr W.
 - (ii) By letter dated 25 February 2001 Mr W requested that the practitioner review his account to ensure some mistake had not occurred, and to forward to him a more detailed itemised account.
 - (iii) During the period April 2001 to October 2001, the Queensland Law Society Inc requested, on various diverse occasions, that the practitioner provide an itemised bill of costs to Mr W.
 - (iv) Notwithstanding such requests, the practitioner failed to render a bill of costs covering all work for the said client to which such request related, until 31 October 2001.
- (b) In connection with the matter of Mrs G:
 - (i) On 20 April 2001 the practitioner rendered a memorandum of costs to his client, Mrs G, for work performed from 1 September 2000 to 10 April 2001.
 - (ii) By letter dated 23 April 2001, Messrs B, Solicitors for Mrs G requested that the practitioner provide a bill of costs in taxable form with regard to the account the subject of the practitioner's letter of 20 April 2001, within 28 days.
 - (iii) During the period July 2001 to October 2001, the Society requested, on various diverse occasions, that the practitioner provide an itemised bill of costs to Mrs G.
 - (iv) Notwithstanding such requests, the practitioner failed to render a bill of costs covering all work for the said client to which such request related, until 6 November 2001.

Charge 2

2. That the practitioner is guilty of professional misconduct, or unprofessional conduct or practice in that he:

- (a) in breach of his duty as a solicitor; and/or
- (b) in breach of his duty to maintain reasonable standards of competence or diligence;

has failed, despite request, to deliver to his client, Mrs G, all documents which he is holding on her behalf.

Particulars

- (a) By letter dated 5 April 2001 Messrs B, Solicitors, on behalf of Mrs G, a client of the practitioner, requested that the practitioner make available for collection Mrs G's file.
- (b) Subsequent to 5 April 2001 both Messrs B on behalf of Mrs G and the Society, in the course of its investigation of a complaint on behalf of Mrs G, have requested that the practitioner deliver up Mrs G's file.
- (c) Notwithstanding such requests, the practitioner has failed or refused to deliver to the said client, or to her solicitors, all documents which he is holding on her behalf.

Charge 3

3. That the practitioner is guilty of unprofessional conduct or practice, in that, in relation to the conduct of his practice:
- (a) he has been guilty of undue delay; and/or
 - (b) he has been guilty of a failure to maintain reasonable standards of competence or diligence.

Particulars

- (a) In connection with the matter of TW:
 - (i) In October 1995 Mr TW retained the practitioner to advise in relation to his proposed retirement package, and for the purposes of such advice, met with the practitioner on 2 November 1995.
 - (ii) By letter dated 3 November 1995 the practitioner informed Mr TW that he would consider the implications of the retirement package and revert to Mr TW shortly with his comments.
 - (iii) The practitioner failed, subsequent to his letter of 3 November 1995 to advise Mr TW in relation to his retirement package.
- (b) Further in connection with the matter of TW:
 - (i) By letters dated 29 January 1999, 27 July 1999 and 21 December 1999 respectively, Mr TW wrote to the practitioner requesting that the practitioner reply to certain queries concerning the matter of the practitioner's failure to advise in relation to his proposed retirement package and concerning the matter of 2 accounts issued by the practitioner.
 - (ii) The practitioner failed or refused to reply to any of the client's said correspondence until 28 November 2001, following the intervention of the Society in October 2001 on behalf of Mr TW.
- (c) In connection with the matter of Mrs G:
 - (i) By letter to the practitioner dated 24 April 2001, Messrs B, Solicitors for the practitioner's former client, Mrs G, requested that the practitioner provide to them at his earliest opportunity, *inter alia*:
 - A. Copy of any accounts previously rendered to G from the period January 1996 through to present;
 - B. Details of any moneys received by [the practitioner] for and on behalf of G during that period.
 - (ii) A. By letter dated 23 November 2001 to Messrs B, the practitioner provided a copy of his trust ledger in relation to the matter of Mrs G re Family Law;
 - B. On 11 March 2002 the practitioner provided Mr D with copies of his bills of costs dated 12 July 2000 for the period 3 May - 13 July 2000 and 6 September 2000 for the period 13 July 2000 - 31 August 2000 respectively.
 - C. On 11 March 2002 the practitioner informed Mr D that by cheque dated 19 July 2000 in the sum of \$2,912.23, Mrs G had paid his account dated 12 July 2000.
 - (iii) Save as set out in paragraph (ii) above, the practitioner has failed or refused to reply to the said requests.

Charge 4

4. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice, in that, in breach of section 5H(1) of the *Queensland Law Society Act*, he failed in the respects particularised below to comply with a Council requirement to give the Council in writing within a stated reasonable time, an explanation of a matter being investigated.

Particulars

- (a) In connection with the matter of the investigation of a complaint by W:
 - (i) By letter dated 4 April 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, requested the practitioner to provide his comment with regard to the matters referred to in a letter of complaint received by the Society from Mr W, within 21 days. Other than to advise the Society on 5 April 2001 that he had asked a solicitor in his employ to review the matter and Mr W's concerns, and to respond to the practitioner, no response was received from the practitioner within the time specified.
 - (ii) By letter dated 2 July 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, requested the practitioner to confirm, by return mail, that an itemised account, the subject of the matter of the complaint by Mr W, which the Society had been advised was to be completed by 29 May 2001, had been completed and provided to the said client. No reply was received from the practitioner within the time specified.
 - (iii) By letter dated 13 July 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, and having received no reply to its letter of 2 July 2001, requested the practitioner to advise by 20 July 2001 that the account, the subject of the said complaint, had been completed and provided to the said client. No reply was received within the time specified.
 - (iv) By letter dated 24 July 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, and having received no reply to its aforesaid letters of 2 July 2001 and 13 July 2001, requested the practitioner to provide the bill of costs the subject of the said complaint, within 7 days. No reply was received by the practitioner within the time specified.

- (b) In connection with the matter of a complaint by Ms L on behalf of Mrs G:
- (i) By letter dated 23 May 2001, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory explanation of the matters referred to in a letter of complaint received by the Society from Ms L on behalf of her mother, Mrs G, by 15 June 2001. No response was received from the practitioner within the time specified.
 - (ii) By letter dated 20 June 2001, the Council, by its Secretary being duly authorised in that regard, and having received no reply to its aforesaid letter of 23 May 2001, requested the practitioner to provide his response by 27 June 2001. By letter dated 28 June 2001, the Council, by its Director – Professional Standards, being duly authorised in that regard, granted the practitioner an extension of time to 2 July 2001 in which to provide his response. No reply was received from the practitioner within the time specified.
- (c) In connection with the matter of the investigation of a complaint by Messrs B, Solicitors on behalf of Mrs G:
- (i) By letter dated 15 June 2001, the Council by its Manager, Client Relations Centre, being duly authorised in that regard, requested the practitioner to advise the position regarding certain matters the subject of a complaint received by the Society from Messrs B, Solicitors on behalf of Mrs G, within 10 days. No reply was received from the practitioner within the time specified.
 - (ii) By letter dated 28 June 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, and having received no reply to its aforesaid letter of 15 June 2001, requested the practitioner to provide his response by 6 July 2001. No reply was received from the practitioner within the time specified.
 - (iii) By letter dated 12 July 2001, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, and having received no reply to its aforesaid letters of 15 June 2001 and 28 June 2001, requested the practitioner to provide his response by 19 July 2001. No reply was received from the practitioner within the time specified.
- (d) In connection with the matter of the investigation of a complaint by Mr TW:
- (i) By letter dated 10 October 2001, the Council, by its Director, Professional Standards, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from Mr TW, by 7 November 2001. No response was received from the practitioner within the time specified.
 - (ii) By letter dated 29 October 2001, the Council, by its Director – Professional Standards, being duly authorised in that regard, emphasised the Society's request that the practitioner provide his response to its aforesaid letter of 10 October 2001 by 7 November 2001. No response was received from the practitioner within the time specified.

Charge 5

5. That the practitioner is guilty of professional misconduct in that, in the respects particularised below, he failed to comply with a notice given by the Council under section 5H(2) of the *Queensland Law Society Act*, for a period of 14 days after the giving of the notice.

Particulars

- (a) In connection with the matter of the investigation of a complaint by Mr W:
- (i) The Council, by its Director – Professional Standards, being duly authorised in that regard, gave the practitioner a written notice in accordance with section 5H(2) of the *Queensland Law Society Act* on 14 August 2001.
 - (ii) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto.
 - (iii) Following requests by the practitioner, the Council, by its Officers, being duly authorised in that regard, granted the practitioner an extension of time to 8 October 2001, in which to provide his response.
 - (iv) The practitioner failed, within the extended time, to furnish a reply thereto.
- (b) In connection with the matter of the investigation of a complaint by Messrs B, Solicitors on behalf of Mrs G:
- (i) The Council, by its Director – Professional Standards, being duly authorised in that regard, gave the practitioner a written notice in accordance with section 5H(2) of the *Queensland Law Society Act* on 10 August 2001.
 - (ii) The practitioner failed, within the 14 day period specified in the notice to furnish a reply thereto.
 - (iii) Following requests by the practitioner, the Council, by its Officers, being duly authorised in that regard, granted the practitioner an extension of time to 8 October 2001 in which to provide his response.
 - (iv) The practitioner failed, within the extended time, to furnish a reply thereto.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr R G Perrett, Solicitor of Clayton Utz, Solicitors, Lawyers
- (b) For the Practitioner:
Mr D L K Atkinson of Counsel

Findings and Orders

1. The Tribunal finds the matters set out in the Notice of Charge dated 4 June 2002, as admitted by the Practitioner, proved.
2. In relation to charges 1, 2, 4 and 5 of the Notice of Charge dated 4 June 2002, the Tribunal finds that the matters amount to professional misconduct. In relation to charge 3 in the Notice of Charge, the Tribunal finds that those matters amount to unprofessional conduct.
3. The Tribunal finds the practitioner guilty of professional misconduct and unprofessional conduct.
4. The Tribunal orders that the practitioner be suspended from practice for a period of twelve (12) months, the suspension to take effect from 17 October 2002, expiring on 16 October 2003.
5. The Tribunal orders that the practitioner must not accept any new instructions from today.
6. The Tribunal orders that after 16 October 2003, the practitioner may only apply for an employee-only practising certificate for twelve months from the date of issue of that certificate.
7. The Tribunal further orders that the practitioner must undertake and complete to the satisfaction of the Queensland Law Society Incorporated, a practice management course (excluding the trust account module) prior to applying to the Queensland Law Society Incorporated for an employee-level practising certificate.
8. The Tribunal further orders that the practitioner must pay \$600 by way of compensation to TW within thirty (30) days, such payment to be a condition precedent to the practitioner re-applying for his practising certificate.
9. In relation to the claim for compensation by Mr W, the Tribunal is not satisfied that the pecuniary loss claimed has been caused by the professional misconduct or unprofessional conduct or practice of the practitioner.
10. The Tribunal further orders that the practitioner deliver the matrimonial file of Mrs G today.
11. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society in relation to this application, including the hearing on 7 August 2002 and including all the costs of the Clerk to the Tribunal and the Recorder, such costs to be agreed, and failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
12. The Tribunal further orders that the costs of the Queensland Law Society Incorporated be paid within six (6) months on agreement on the amount of costs or, failing agreement, of the delivery of the assessment to the practitioner.
13. The Tribunal orders that publication of Exhibit 5 be prohibited pursuant to the provisions of section 6L(4) of the *Queensland Law Society Act* 1952 as amended.

Reasons

In relation to the Charges:

- In relation to charges 1, 2, 4, and 5, the Tribunal finds that the matters amount to professional misconduct.
- In relation to charge 3, the Tribunal finds that the matters amount to unprofessional conduct.

The Tribunal notes the previous appearance by the practitioner before this Tribunal on the Charges on 6 and 7 March 2001 and notes the findings and orders made at that hearing.

Dealing with the professional misconduct charge, this Tribunal finds that the practitioner's conduct falls below the reasonable standards of a competent practitioner.

Dealing with the charge of unprofessional conduct, this Tribunal again notes the lack of acceptable standards shown by the practitioner in respect of the events that constitute these charges and the particulars thereof relied upon by the Society and admitted by the practitioner.

The Tribunal notes the cooperation, remorse and guilty plea, albeit today, made by the practitioner.

The Tribunal has considered the evidence and finds that, in the circumstances, the appropriate penalty is suspension from practice, as the previous penalty imposed by this Tribunal in 2001 has not been a deterrent; nor has it raised the practitioner's professional standards.

The members of the public are entitled to expect a higher standard of professional conduct than the practitioner has exhibited. It is the Tribunal's opinion that at the end of the period of suspension, and combined with the other orders that the Tribunal proposed to make, that the practitioner should be a proper person to be held out as a practising solicitor.