

## In the Matter of Practitioner X

**Case No:** SCT/33  
**Date of Hearing:** 29 March 2000  
**Appearing Before:** Mr J S P O'Keeffe (Chairperson)  
Ms C C Endicott  
Ms M Green (Lay Member)  
**Penalty:** Fined \$4,000.00

### Charges

#### 1. A-M W (W)

That in breach of Section 5H of the Queensland Law Society Act 1952 (as amended) (the "Act"), the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than fourteen (14) days after notice was given to him under Section 5H(2) of the Act.

#### Particulars

- (a) By a letter on behalf of the Council to the practitioner dated 15 May 1998, the practitioner was requested to provide, by 4 June 1998, a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint from W to the Council.
- (b) The practitioner did not reply to that letter by 4 June 1998.
- (c) By a telephone conversation on 17 June 1998, one KC on behalf of the Council reminded the practitioner of the letter of 15 May 1998 and of his failure to respond to it, in response to which the practitioner stated that he would "get around to it in the next few days".
- (d) By 9 July 1998, the practitioner had not replied to the letter dated 15 May 1998.

- (e) By Notice on behalf of the Council to the practitioner dated 9 July 1998, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters referred to in the letter dated 15 May 1998 was a breach of Section 5H(1) of the Act, and that if such failure continued for a period of fourteen (14) days after the date of his receipt of such notification, he would be liable to be dealt with for professional misconduct unless he had reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period.
- (f) In breach of Section 5H(2), the practitioner did not comply with the Council's requirement until 17 August 1998, on which date a letter from the practitioner dated 12 August 1998 was received by the Council.

#### 2. Section 31 Report

That in further breach of Section 5H of the Act, the practitioner again committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than fourteen (14) days after notice was given to him under Section 5H(2) of the Act.

#### Particulars

- (a) By a letter on behalf of the Council to the practitioner dated 5 August 1998, the practitioner was requested to provide, within fourteen (14) days, his comments in response to a report to the Council prepared pursuant to Section 31 of the Act and dated 31 July 1998, a copy of which was enclosed with the letter.
- (b) The practitioner did not reply to that letter.
- (c) Notwithstanding further letters to the practitioner dated 24 August 1998 and 16 September 1998, as at 2 October 1998, the practitioner had not replied to the letter dated 5 August 1998.

- (d) By a letter on behalf of the Council to the practitioner dated 2 October 1998, the practitioner was informed, inter alia, that if he did not provide a sufficient and satisfactory reply to the letter of 5 August 1998 and did not provide an explanation for not replying to the letters of 5 August 1998, 24 August 1998 and 16 September 1998, a Notice would be sent to him pursuant to Section 5H(2) of the Act, and that failure to provide a sufficient and satisfactory reply to that Notice may result in him being dealt with for professional misconduct.
- (e) The practitioner did not reply to that letter.
- (f) By Notice dated 12 October 1998, a copy of which was forwarded to the practitioner by facsimile transmission that day, the practitioner was given written notice that his failure to furnish an explanation in writing of the matters referred to in the letters dated 5 August 1998, 24 August 1998, 16 September 1998 and 2 October 1998 was a breach of Section 5H(1) of the Act, and that if such failure continued for a period of fourteen (14) days after the date of his receipt of such notification, he would be liable to be dealt with for professional misconduct unless he had reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period.
- (g) In breach of Section 5H(3) of the Act, the practitioner did not reply to that Notice dated 12 October 1998.

### 3. B D M (M)

That in breach of Rule 83 of the Rules of the Act, the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than fourteen (14) days after notice was given to him under Rule 83 of the Rules of the Act.

#### Particulars

- (a) By letter on behalf of the Council to the practitioner dated 20 January 1998, the practitioner was required to provide, within fourteen (14) days, all files he had in relation to the matrimonial matters between M and his wife.
- (b) By an undated letter received on behalf of the Council on 27 January 1998, the practitioner provided certain information in response to the letter dated 20 January 1998, but did not forward any files as required by that letter.

- (c) By letter dated 12 February 1998, the practitioner was required to provide, within ten (10) days, the files requested by the letter dated 20 January 1998.
- (d) The practitioner did not reply to that letter.
- (e) By letter on behalf of the Council to the practitioner dated 24 February 1998, the practitioner was informed that, should a written reply not be received from him within seven (7) days, a Notice would be issued to him pursuant to Rule 83 of the Rules of the Queensland Law Society Incorporated ("the Rules").
- (f) The practitioner did not reply to that letter.
- (g) By Notice on behalf of the Council to the practitioner dated 9 March 1998, a copy of which was forwarded to him by facsimile transmission that day, the practitioner was informed that he had failed to furnish a satisfactory reply in writing to the matters referred to in the letters dated 12 February 1998 and 24 February 1998, and that if such failure continued for a period of fourteen (14) days from the date of his receiving the Notice, he would be liable to be dealt with for professional misconduct.
- (h) The practitioner did not reply to that Notice within the fourteen (14) day period to which it referred.
- (i) By an undated letter received on behalf of the Council on 27 March 1998, the practitioner informed the Council that he would respond to the letter of 12 February 1998 "early next week".
- (j) By letter to the Council dated 2 April 1998, the practitioner forwarded a bundle of documents which was described in the letter as "a copy of our file for your perusal and return".
- (k) By letter on behalf of the Council to the practitioner dated 28 May 1998, the practitioner was requested to explain the absence of any file notes, attendance and telephone memoranda which would normally be expected to be on a file of the nature requested, and was again required to provide his original file, by 15 June 1998.
- (l) The practitioner did not provide his original file as required by that letter.
- (m) By letter on behalf of the Council to the practitioner dated 17 June 1998, the practitioner was required to provide his written response to the letter dated 28 May 1998 within seven (7) days.

- (n) The practitioner did not reply to that letter.
- (o) By Notice on behalf of the Council to the practitioner dated 30 June 1998, which was forwarded to the practitioner by facsimile transmission that day, the practitioner was informed that he had failed to furnish a satisfactory reply in writing to the matters referred to in the letters dated 28 May 1998 and 17 June 1998, and was notified in writing that if such failure continued for a period of fourteen (14) days from the date of his receipt of the Notice, he would be liable to be dealt with for professional misconduct.
- (p) The practitioner did not provide the original of his file to the Council within the period referred to in the Notice of 30 June 1998.
- (q) By letter to the Council dated 17 July 1998, the practitioner stated that he had been advised that all file notes, attendance and telephone memoranda were not part of the client's file as such, and that given the Council's indication that the matter may be referred to the Professional Standards Committee in relation to an allegation of conflict of interest, and as such documents may form part of the practitioner's defence, he should not be required to produce those documents or answer anything further as a matter of procedural fairness until such time as the evidence of the allegation was made clear.
- (r) By letter on behalf of the Council to the practitioner dated 8 September 1998, the practitioner was informed that, if called upon by the Secretary to do so, he was required to produce all documents, files, etc, and was requested to provide his response no later than 14 September 1998.
- (s) The practitioner did not reply to that letter.
- (t) The practitioner did not produce to the Council the originals of any of the files, which he was required to so produce.

#### 4. RW (W)

That in breach of Section 5H of the Queensland Law Society Act 1952 (as amended) ("the Act"), the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than fourteen (14) days after notice was given to him under Section 5H(2) of the Act.

#### Particulars

- (a) By letter on behalf of the Council to the practitioner dated 21 April 1999, the practitioner was requested to provide within fourteen (14) days his original file in reply to a letter of complaint dated 31 March 1999 from W to the Council.
- (b) The practitioner did not reply to that letter by 5 May 1999.
- (c) By a letter on behalf of the Council to the practitioner dated 12 May 1999, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that unless a written response was received by 17 May 1999, a Notice would issue pursuant to Section 5H.
- (d) The practitioner did not reply to that letter by 17 May 1999.
- (e) By Notice on behalf of the Council to the practitioner dated 19 May 1999, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters referred to in the letters dated 21 April 1999 and 12 May 1999 was a breach of Section 5H(1) of the Act, and that if such failure continued for a period of fourteen (14) days after the date of his receipt of such Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period.
- (f) The practitioner did not reply to that Notice by 2 June 1999.
- (g) By a letter on behalf of the Council to the practitioner dated 4 June 1999, the practitioner was advised that he was in breach of Section 5H and that the matter would be referred to the Professional Standards Committee unless his response and his file were received by return post.
- (h) The practitioner did not reply to that letter.
- (i) By a letter on behalf of the Council to the practitioner dated 15 June 1999, the practitioner was advised that the matter would be referred to the Professional Standards Committee meeting scheduled for 17 June 1999 with a recommendation that a further charge be brought against him in respect of his alleged breach of Section 5H.

(i) The practitioner did not reply to that letter.

## 5. B H (H)

That in breach of Section 5H of the Queensland Law Society Act 1952 (as amended) ("the Act"), the practitioner committed professional misconduct by failing to comply with a requirement of the Council for a period of no less than fourteen (14) days after notice was given to him under Section 5H(2) of the Act.

### Particulars

(a) By letter on behalf of the Council to the practitioner dated 29 June 1999, the practitioner was given a copy of a complaint dated 21 June 1999 from H and the practitioner was requested to provide a sufficient and satisfactory explanation of the matters referred to in the complaint by 21 July 1999.

(b) The practitioner did not reply to that letter.

(c) By Notice on behalf of the Council to the practitioner dated 22 July 1999, a copy of which was forwarded by facsimile transmission to the practitioner that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters referred to in the letter dated 29 June 1999 was a breach of Section 5H(1) of the Act, and that if such failure continued for a period of fourteen (14) days after the date of his receipt of such Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not complying with the requirement to provide an explanation in writing within the specified period.

(d) The practitioner did not reply to that Notice.

(e) By letter on behalf of the Council to the practitioner dated 12 August 1999, the practitioner was advised that the matter would be referred to the meeting of the Professional Standards Committee scheduled for 26 August 1999.

(f) The practitioner did not reply to that letter.

### Appearances

(a) For the Council of the Queensland Law Society Incorporated:  
Ms J A Schafer, solicitor of Thynne & Macartney, solicitors.

(b) For the practitioner:

Mr A J MacSporran of Counsel instructed by Deardens Lawyers.

### Findings and Orders

1. The Tribunal found the practitioner guilty of professional misconduct with respect to all five charges in the Notice of Charge.
2. The Tribunal ordered that the practitioner pay a penalty of \$4,000.00 to the Fund, such payments to be made by twenty-four (24) equal calendar monthly instalments, commencing on 1 May 2000 and thereafter on the first day of each calendar month. Default in any payment will result in the amount then outstanding becoming immediately due and payable.
3. The Tribunal noted, accepted and relied on the undertaking given by the practitioner to complete the Practice Management Course as soon as possible.
4. The Tribunal ordered by consent that the practitioner pay the costs incurred by the Queensland Law Society Incorporated as agreed between the parties or, failing agreement, as assessed by Monsour Legal Costs Pty Ltd.

### Reasons

The practitioner, through his Counsel and in his affidavit sworn on 27 March 2000, admitted the charges and conceded that he was guilty of professional misconduct with respect to all five charges.

The Tribunal noted from the particulars supporting the charges that the practitioner had ignored correspondence from the Queensland Law Society Incorporated and Notices served pursuant to Section 5H(2) of the Queensland Law Society Act over a period of almost twenty (20) months.

The Tribunal regarded this conduct as serious. In considering the penalty, the Tribunal took into account the submissions made by the practitioner's Counsel and the two references being exhibits "2" and "3".