

# In the Matter of Michael Andrew Ridge

Case Number: SCT/95  
Date of Hearing: 31 March & 1 April 2003  
Appearing Before: Ms C C Endicott  
(Chairperson/Practitioner Member)  
Mr P L Cooper (Practitioner Member)  
Dr J Lamont (Lay Member)  
In Attendance: Mr J Nimmo (Legal Ombudsman)  
Mr J W Broadley (Clerk)  
Penalty: Struck Off

## Charges

The Council of the Queensland Law Society Incorporated requires the Practitioner to answer to the following charges:

1. The practitioner wrote a letter to Mr DB the contents of which were, to the practitioner's knowledge, false and did so for the purpose of intimidating Mr DB whose company was then involved in a dispute with the practitioner's wife.

### Particulars

- (a) The practitioner's wife, Mrs FR, was, until about September 1997, employed as a real estate salesperson by N trading as M;
- (b) By letter dated 18 December 1998, N's solicitors, EC demanded that Mrs FR account to N for the sum of \$6,760.00 being money received by her in her capacity as an employee;
- (c) By letter dated 23 December 1998, on the letterhead of his then employer G addressed to Mr DB, the practitioner asserted:
  - (i) that G had been retained by Ms LG, Ms LS and Mrs FR;
  - (ii) that statements were being taken from Ms LG, Ms LS and Mrs FR to support complaints of sexual harassment proposed to be lodged in the Queensland Anti-Discrimination Commission against Mr DB "relating to several separate incidents of sexual harassment which occurred during 1998";
- (d) In fact, neither Ms LG nor Ms LS had:
  - (i) retained G or the practitioner;
  - (ii) made any complaint to the practitioner of sexual harassment by Mr DB;
  - (iii) instructed the practitioner to write on her behalf to Mr DB.

## Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr B Bartley, Solicitor of Messrs Brian Bartley & Associates
- (b) For the Practitioner:  
Mr S W Sheaffe of Counsel instructed by Messrs McColm Matsinger, Solicitors
- (c) For the Complainant:  
Mr P W Hackett of Counsel instructed by Messrs Colwell Wright, Solicitors

## Findings and Orders

1. The Tribunal finds the matters set out in the Notice of Charge dated 18 December 2002 proved and that those matters constitute professional misconduct.
2. The Tribunal finds the practitioner guilty of professional misconduct.
3. The Tribunal orders that the name of the Practitioner be struck from 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 of the recorder, such costs to be agreed between the practitioner and the Queensland Law Society and failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
5. The Tribunal further orders that the Practitioner be allowed six (6) months to pay the costs, as from the date of agreement or from the date of assessment, whichever is the later.
6. The Tribunal refuses the application on behalf of the Practitioner for a stay of coming into effect of the order for strike-off.
7. The Tribunal refuses the application of the complainant, Mr DB for compensation.

## Reasons

## Findings

The practitioner has been charged with misconduct arising from a letter he prepared and sent to Mr DB dated 23 December 1998.

In that letter the practitioner stated that he acted for Mrs FR, his wife, for Ms LS and for Ms LG. In that letter the practitioner stated that he was then in the process of preparing statements to support complaints that his three clients would lodge with the Queensland Anti-Discrimination Commission about several incidents of sexual harassment directed towards his clients by Mr DB during 1998.

The Queensland Law Society alleges that the practitioner did not have instructions from Ms LS, nor from Ms LG, to act on their behalf. The Queensland Law Society called evidence from Ms LS and from Ms LG. Both these witnesses deny instructing the practitioner to act for them in any complaint of sexual harassment against Mr DB.

The Queensland Law Society also alleges that the practitioner sent this letter for the purpose of intimidating Mr DB who was in a dispute with the practitioner's wife.

The practitioner urged the Tribunal to discount the evidence of these two witnesses as they had been friends of his wife, Mrs FR and they had both subsequently fallen out with her. While these witnesses may have motives to harm Mrs FR, they do not have any motive to harm the practitioner and the Tribunal does not accept that their evidence was untruthful or actuated by malice, either against the practitioner or his wife.

The practitioner and his witnesses gave evidence that he had been instructed by Mrs FR, Ms LS and Ms LG, to write a letter to Mr DB to complain about his behaviour which amounted to sexual harassment of these three women. The practitioner alleges that the letter was to endeavour to cause Mr DB to stop his behaviour which the women had found objectionable and distressing to them.

The Queensland Law Society alleges that the letter was written at a time when the practitioner knew that his wife had just received, several days earlier, a letter of demand from solicitors instructed by Mr DB. The Tribunal is faced with the fundamental divergence of evidence.

The practitioner and his witnesses all gave sworn evidence that he was instructed during the course of a gathering at his residence to write a letter by Ms LS and Ms LG while those two women deny attending such a gathering and deny instructing him to write a letter for them.

When faced with this divergence of evidence the Tribunal must evaluate carefully the evidence given by the witnesses and the credit of those witnesses.

The Tribunal finds that the evidence given by Ms LS and Ms LG was creditable, to the effect that they deny being at a meeting with the practitioner and deny instructing him to write the letter.

The Tribunal does not consider that the practitioner or his wife were creditable witnesses and if their evidence was not supported by Ms AJ or Mr MA, the Tribunal would have little difficulty in finding the charge proved.

As to those witnesses, Ms AJ and Mr MA, the Tribunal does have some difficulties, however. It is noted that a statement was not obtained from Mr MA, or an affidavit, until shortly before the charge came on for hearing before this Tribunal.

The practitioner's explanation for not getting a statement from Mr MA was that at the time that he was originally made aware of the complaint, the practitioner did not take the complaint seriously enough. However the practitioner did, at that time, and particularly September 2001, obtain a statement from Ms AJ who, in her statement, did not make any reference to Mr MA attending the crucial meeting at the practitioner's residence in December 1998.

As pointed out in the submissions by the counsel for Mr DB, which the Tribunal has found of great assistance in this matter, there really was no logical reason given to the Tribunal why a statement was obtained from Ms AJ in September 2001 and yet a statement was not obtained from Mr MA even though he was around the area where the Rs were and had a continual association and friendship with the R family.

As far as Ms AJ is concerned, her evidence is not entirely satisfactory for this Tribunal. Her reference, for instance, to when she was employed was wrong, initially. She said 1998 and the Tribunal does find it difficult to accept that she does not recall when she was employed and yet has a very clear recollection of a conversation between other people that occurred some years before.

The detail of her evidence, again, is not satisfactory. She appears to remember certain things, particularly the two women, Ms LG and Ms LS, having coffee when they deny that it is their habit to drink coffee.

She also gives evidence that she forgot about the presence of Mr MA at the meeting. Again that seems a little bit coincidental. She also gave evidence of being paid in cash as to the work she did for M. Again that seems a somewhat unsatisfactory explanation, given the fact that Mr DB had no recollection of her working for the agency.

It is also very clear that she has a very close and long relationship with the R family, not only has she worked for them, but her daughter rides their horses and she has a clear ongoing connection with the R family and therefore her evidence as an independent witness is not, on examination, as independent as it may first seem.

In relation to Mr MA, his evidence also, the Tribunal considers unsatisfactory. He has come into the matter very late. He has been only asked to recall evidence as to a conversation in which he did not take part, but just merely listened to, some years earlier and yet he gives a very clear recollection of what was said, but on other issues his memory is, understandably, not so clear.

We consider, in the circumstances that his late involvement in the proceedings and the circumstances in which he gave evidence of being a close associate of the R family, means that his evidence is also not as creditable because he is not as independent as, at first thought, appears to be the case.

Looking then at the evidence, the Tribunal has already said it accepts the credibility of the witnesses, Ms LG and Ms LS and prefers their evidence in the sense that they said they did not attend the meeting in December 1998 at the residence of the practitioner and that they never instructed the practitioner to write a letter on their behalf about conduct exhibited towards them by Mr DB.

The Tribunal finds the practitioner's version about the meeting to be improbable and just not acceptable. The Tribunal also finds it is improbable that the practitioner was not told of the receipt of a letter demand in December 1998 when he had been so closely involved in responding to a police complaint based on the same matter less than 12 months earlier.

The Tribunal finds that the practitioner's letter dated 23 December 1998 contained false matters and that the practitioner knew that it contained false matters.

In that regard the Tribunal refers also again to the written submissions made by Mr Hackett and in relation to the paragraphs on pages 6, 7 and 8, endorses much of what is said in those submissions.

The Tribunal finds that there is no evidence that the firm of G was instructed to act on behalf of the complainants.

The Tribunal also finds that the practitioner, on the findings we have made, was not instructed to act on behalf of Ms LG and Ms LS in relation to this alleged complaint.

It has been conceded by the practitioner that he did not have current instructions in December 1998 to prepare statements from any persons in relation to complaints to be lodged with the Queensland Anti-Discrimination Commission. That statement in his letter was knowingly false and it is also found by the Tribunal that in December 1998 the practitioner did not have instructions to institute complaints to the Anti-Discrimination Commission on behalf of the complainants, Ms LG and Ms LS and he knew that was the case.

Lastly the Tribunal finds that the reference in the letter to several incidents of sexual harassment occurring in 1998 was false on the part of the practitioner, as the best knowledge that he may have had of any conduct by Mr DB was that in relation to his wife and the practitioner gave evidence as far as he is aware, that that conduct would have ceased in 1997 when Mrs FR ceased her employment with M.

The Tribunal finds that the practitioner did have the intention, when writing this letter, of intimidating Mr DB who had, only a few days earlier, instructed his solicitors to write a letter of demand to his wife, Mrs FR. Otherwise the coincidence would be incredible of the practitioner writing this letter to Mr DB at that time.

The Tribunal has come to the only real conclusion open to it, namely that there was an intention to intimidate Mr DB by sending the letter dated 23 December 1998.

With the findings made and the charge being proven, the Tribunal finds that the practitioner has been guilty of professional misconduct.

## **Penalty**

The Tribunal has found the practitioner guilty of professional misconduct. In doing so the Tribunal has made findings on the false evidence presented by the practitioner when defending the complaint originally made to the Queensland Law Society and later when defending the charge before this Tribunal.

The Queensland Law Society is charged under its Act to discipline solicitors in Queensland. The Queensland Law Society cannot function properly if practitioners do not cooperate with full and frank answers to complaints. The Tribunal also cannot discharge its functions properly if practitioners do not give full and frank and truthful evidence to it.

The practitioner in this case has failed to provide full and frank responses to the initial complaint and has failed to provide full and frank evidence to the charge before this Tribunal.

The practitioner has been found guilty of conduct which is a serious departure from the conduct expected from solicitors. The public expects solicitors to be truthful and to discharge their role fairly and in a reputable fashion.

The practitioner has abused his position as a solicitor and in doing so has brought the profession into disrepute. The practitioner has manifested an unfitness to practice as a solicitor.

While it is submitted by his counsel that the conduct complained of took place on one occasion only, it is not the frequency of the conduct, but the gravity of the conduct that is relevant. The conduct of the practitioner, when faced with this complaint and with this charge, demonstrates that he has, in fact, an on-going unfitness to practice as a solicitor.

In doing so the Tribunal also takes into account the fact that the practitioner has been the subject of a previous censure by the Queensland Law Society.

The Tribunal finds that there is really only one penalty that can be imposed, namely an order to strike the name of the practitioner from the roll of solicitors.

## **Complainant's application for compensation**

In relation to the application for compensation, the Tribunal is not satisfied that the complainant has suffered pecuniary loss because of the proven misconduct of the practitioner which is the subject of this charge and dismisses the application for compensation.