

In the Matter of Helmuth Seidensticker

Case Number: SCT/6193

Date of Hearing: 10 September 2002

Appearing Before: Mr P J Mullins (Presiding Member/ Practitioner Member)

Ms B Reaston (Practitioner Member)

Ms E Jordan (Lay Member)

Penalty: Struck Off

Charges

1. In breach of section 5H(3) of the Queensland Law Society Act 1952 (as amended), the Practitioner failed to furnish a sufficient and satisfactory explanation in writing of the matters in respect of which he had been requested to furnish such explanation pursuant to section 5G(a) of the Queensland Law Society Act 1952 (as amended).

Particulars

(a) In connection with the matter of a complaint by EGJ:

(i) By letter dated 17 June 1998, the Queensland Law Society Inc ("the Society"), by its Secretary, requested the Practitioner to furnish by 6 July 1998 a sufficient and satisfactory explanation as to why he was not the holder of a current Practising Certificate whilst employed by M, Solicitors, as a Solicitor from 11 August 1997 to 14 November 1997 in apparent breach of section 39 of the Queensland Law Society Act 1952;

(ii) By letter dated 2 July 1998 the Practitioner requested from the Society an extension of the period within which to provide the explanation sought to 13 July 1998;

(iii) By letter dated 6 July 1998, the Society, by its Secretary, granted the Practitioner an extension to 13 July 1998 for the provision of his explanation;

(iv) By letter dated 10 July 1998, the Practitioner, requested a further extension of time within which to provide his explanation;

(v) By letter dated 14 July 1998, the Society, by its Secretary, allowed the Practitioner an extension of time for his reply until 27 July 1998 and provided the Practitioner with certain information requested to assist him in providing his explanation;

(vi) An explanation was not received from the Practitioner within the further time allowed by the Society or at all;

(vii) By letter dated 29 July 1998 the Society by its Secretary gave warning of the issue of a Notice pursuant to section 5H unless a written reply was received;

(viii) On 31 July 1998 the Society by its Secretary issued a Notice under section 5H in respect of the said failure to provide an explanation which was given on that day by registered mail addressed to the Practitioner by his name and his address as advised by the Practitioner to the Society.

(b) In connection with the matter of a complaint by KW:

(i) By letter dated 22 September 1998, the Society, by its Secretary, requested the Practitioner to furnish a sufficient and satisfactory written explanation of the matters referred to in the complaint by 13 October 1998. No reply was received from the Practitioner within the time specified;

(ii) On 19 October 1998 the Society by its Secretary signed a Notice under section 5H of the Queensland Law Society Act 1952 (as amended) and served same in accordance with Rule 13 of the Rules of the Queensland Law Society Inc on that day by registered post addressed to the Practitioner by his name at his address and received a delivery confirmation – advice receipt from Australia Post indicating same was delivered on 22 October 1998. The Society has received no response to the Notice.

2. In breach of sections 38 and 39 of the Queensland Law Society Act 1952 the Practitioner practised as a Solicitor in the employ of M, Solicitors of Hervey Bay, Queensland from 18 August 1997 to 14 November 1997 without having at the time a Certificate then in force issued to the Practitioner by the Secretary of the Society as referred to in section 38 of the Queensland Law Society Act 1952 (as amended).

Particulars

(a) By letter dated 6 August 1997 M, Solicitors advised the Society that the Practitioner would be commencing employment with that firm on 11 August 1997;

(b) By letter dated 18 August 1997 the Society by KJ Davis, Manager Membership Records wrote to M, Solicitors and advised that firm that the Practitioner does not hold a current Practising Certificate and enclosed an Application form for a Practising Certificate;

(c) By 16 September 1997 the Society by KJD, the Manager for Membership Records wrote to M, Solicitors and indicated a reply had not been received to the Society's letter of 18 August 1997 and asking that they give immediate attention to having the Practitioner lodge an application for a Practising Certificate;

(d) By letter dated 8 October 1997 the Society by KJD, the Manager for Membership Records wrote to the Practitioner care of M enclosing copies of its letters dated 18 August and 16 September 1997 to M noting that as he had been practising as an employed Solicitor since 11 August 1997 without a current Practising Certificate the matter would have to be referred to the Secretary of the Society for his information and attention and requesting that they attend to this as a matter of urgency;

(e) By letter dated 17 November 1997 M advised the Society that the Practitioner had ceased employment with that firm on Friday 14 November 1997;

(f) The Society's records indicate that the Practitioner had not held a Practising Certificate in accordance with section 38 of the Queensland Law Society Act 1952 since 30 June 1996;

(g) By letter dated 9 March 1998 M, Solicitors advised the Society that the Practitioner was employed by that firm under an employment contract which contained an obligation for the Practitioner to apply and pay for a current Practising Certificate and that the Practitioner had indicated that he would attend to that matter promptly and was aware of his obligation to attend to the matter. M advised that the Practitioner was dismissed on 14 November 1997 by the partners of the firm in part because, despite several requests, he did not produce a current Practising Certificate.

3. That the Practitioner has been involved in criminal conduct which constitutes unprofessional conduct within the meaning of section 3(B)(2) of the Queensland Law Society Act 1952.

Particulars

(a) On 23 October 2000 at Brisbane in the State of Queensland the Practitioner received one microwave and one television which had been stolen and the Practitioner had reason to believe the said property had been so obtained and that the said stealing was a crime.

(b) On 23 October 2000 at Fortitude Valley in the State of Queensland the Practitioner dishonestly obtained a sum of money from M's Pawnbrokers.

(c) On 11 December 2001 the Practitioner appeared before the Magistrate's Court at Maryborough charged with the above crimes.

(d) The Practitioner pleaded guilty to the said charges and was convicted and fined the sum of \$500.00 and was ordered to pay costs of \$100.00 being a total amount of \$600.00 in default 20 days.

(e) The Court further ordered that an alternative charge of stealing be dismissed as there was no evidence to offer.

(f) The Court further ordered that a conviction not be recorded and made a fine option order.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr P Ryan, Solicitor of Messrs Biggs & Biggs, Solicitors

(b) For the practitioner:

Mr R Clutterbuck of Counsel instructed by Messrs McNamara & Coutts

Findings and Orders

1. The Tribunal orders that the name of the Practitioner be struck from the Roll of Solicitors of the Supreme Court of Queensland.

2. The Tribunal further orders that the costs of the Queensland Law Society Incorporated of the proceedings, including the costs of the recorder and the Clerk, be assessed by Monsour Legal Costs Pty Ltd and that the amount so assessed be paid by the Practitioner within six (6) months of the date of the submission of the assessment by the Queensland Law Society Incorporated.

Reasons

The Practitioner has pleaded guilty to three charges. The first is a breach of section 5H(3) of the Queensland Law Society Act of failing to furnish a sufficient and satisfactory explanation to the society. The second is that he practised without a practising certificate for the period 18 August 1997 to 14 November 1997 in breach of sections 38 and 39 of the Act. The third charge is that he has been involved in criminal activity which constitutes unprofessional conduct as defined in section 3B(2) of the Act. The criminal activity set out in the particulars to that charge is admitted. It includes receiving one stolen microwave and one stolen television and then of dishonestly obtaining a sum of money from a firm of pawnbrokers.

The first two charges are admitted as constituting professional misconduct and the third charge is admitted as constituting unprofessional conduct.

In relation to charge 3, the Practitioner says that he committed that conduct in order to fund a drug habit, but then, the evidence is that he has been off heroin since approximately May or April of 2001. The Practitioner appears to have cooperated fully with police in relation to their investigation of the matters which led to the charges which are referred to in charge 3 before us. It also seems that he has worked solidly at rehabilitating himself in relation to his drug addiction. Evidence before us was that he is undertaking work on a voluntary basis as a law clerk. He started paid work on 23 July 2001 as a family assistant and seems committed to that work. He has made efforts to return to existence as a worthwhile member of the community. However, the standard of conduct required of a solicitor is very high. The Tribunal's role in determining this matter is to protect the public interest. This Practitioner has admitted dishonest conduct. This conduct cannot be trivialised. This conduct was not conduct committed in the course of his practice as a solicitor. However, as Thomas J found in *Queensland Law Society v. Smith* [2001] 1 Qld Reports 649 at 652:

"It has long been established that criminal conduct, having nothing to do with the legal practice of the Practitioner, may well reveal a lack of fitness to remain on the roll."

A number of authorities are quoted there for that proposition.

We view the Practitioner's admitted conduct as being inconsistent with fitness to practise as a solicitor. It was submitted by Mr Clutterbuck for the Practitioner that a period of suspension of 18 months up to three years

should be imposed, on certain conditions. We cannot be satisfied now that the Practitioner will be fit to practise after a period of suspension. The public must have confidence that solicitors will act with honesty and with integrity. This Practitioner has demonstrated a tendency to act dishonestly and without integrity. To protect the public, there is no other option but that his name be struck from the roll of solicitors, and we would propose to make an order in those terms.

In relation to costs, the Society has made an application for costs against the Practitioner. The Practitioner has submitted, through his counsel, that the imposition of a costs order will be an additional burden on him. However, the imposition of a costs order is at the discretion of the Tribunal and the general rule is that costs follow the event. We see no reason to depart from the usual rule and will therefore make an order that the Society's costs of the proceedings before us be assessed by Monsour Legal Costs Pty Ltd and that the amount so assessed be paid by the Practitioner within six months of the date of the submission of the assessment by the Queensland Law Society. We will also order that those costs should include the costs of the recorder and of the Clerk.