

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MS B CUSHING-SULLIVAN
MS J CORK

No S2512 of 2004

LEGAL SERVICES COMMISSIONER

Applicant

and

LEROY MICHAEL ZAGHINI

Respondent

BRISBANE

..DATE 27/09/2005

REASONS FOR FINDING

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE CHIEF JUSTICE: This discipline action under section 276 of the Legal Profession Act relates to three charges brought against the respondent practitioner. The first is that, in breach of his duty as a solicitor, he failed to honour an undertaking given in writing on 24 March 2004 to Canning Craymer Lawyers.

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The second is that, in breach of section 269 subsection (1) of the Legal Profession Act 2004, the practitioner failed to give the applicant, within a stated reasonable time, an explanation in writing of the matter being investigated, and the third is that the respondent failed to comply with a notice given by the applicant under section 269 subsection (3) of the Act for a period of 14 days after the giving of the notice.

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The respondent is a local legal practitioner within the meaning of the Act. He was admitted to practice as a solicitor on 16 September 1975; he is 57 years of age. He currently practises as a sole practitioner under the firm name Corporate Business Lawyers, although he has informed us this morning that the extent of his actual practising these days is limited because of his unwell state.

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The undertaking involved in the first count was that, as recorded in the Canning Craymer letter of 24 March 2004 to which the respondent has signified his agreement, upon the respondent's "personal undertaking that the unpaid invoice as presented by Thomson Redhead solicitors and our (Canning Craymer's) unpaid outlaid disbursements in this matter in the

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sum of \$1,019.87 are paid within 21 days of the date of this letter, our Debra Canning is prepared to provide assistance by way of preparation of affidavit." This arose from a period in 2003 while Ms Canning, who was a principal of Canning Craymer, was acting for a Mr Gant in his proposed purchase of a property.

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That purchase did not proceed because of a dispute between Mr Gant and his proposed financier. Civil proceedings were commenced arising out of the failed transaction in which Canning Craymer retained Mr Bain QC to appear on behalf of Mr Gant and Thomson Redhead to act as Town Agents at the hearing of an interlocutory application.

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The retainer between Ms Craymer and Mr Gant - Miss Canning and Mr Gant, was terminated by Mr Gant. Mr Gant retained the services of the respondent. Mr Gant had not paid for the fees for Mr Bain or Thomson Redhead. Canning Craymer paid Mr Bain's fees. In the further conduct of the proceedings, Mr Gant required assistance from Miss Canning. This was agreed on condition of the personal undertaking to which I have referred.

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The respondent did not pay the amount of a little over a thousand dollars within 21 days of 24th March 2004, the date of the letter according the undertaking. In fact, he did not pay that amount for about 11 months. By letter dated 4th May 2004, Canning Craymer demanded payment which was not made, until by letter dated 15th February 2005, the respondent delivered a cheque to Canning Craymer in the amount of \$1,020 in purported satisfaction of the undertaking.

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The second charge, as I have indicated, relates to the respondent's failure to comply with his obligations under Section 269 subsection 1 of the Act which required him to give the applicant a full explanation of the matters raised in the

complaint, essentially, of failure to comply with the undertaking.

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The third charge relates to the respondent's failure to comply with the statutory notice issued pursuant to Section 269(3) of the Act which required him to provide an explanation within 14 days of the giving of the notice. Under subsection 4 of that provision, "The practitioner is taken to have committed professional misconduct unless he had a reasonable excuse for not complying with the requirement within the period." None has been established.

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As to the characterisation of the misconduct, to which I should say the respondent has, in his terms, pleaded guilty, the breach of undertaking should, in my view, warrant a finding of professional misconduct. It was not an unintended breach. There was no reasonable explanation offered for failure to honour the undertaking for an extended period, as I have said, approximately 11 months. It is right, in my view, to characterise the breach of the undertaking as deliberate and it warrants a finding of professional misconduct which is made.

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In respect of the second charge, that plainly amounts to unsatisfactory professional conduct.

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In respect of the third charge, there should be a finding of statutory professional misconduct because of the provisions of Section 269 subsection 4.

As to penalty, in the respondent's favour, as is conceded by Mr McLean, there are the features that he has had no previous appearance before a disciplinary body. There has been no allegation of dishonesty and the sum required to be paid pursuant to the undertaking was eventually paid.

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It may be noted, on the other hand, that the respondent has not been particularly co-operative with the Tribunal. And that, of itself, suggests an unsatisfactory professional approach. Before us this morning, he indicated that he had been unwell and depressed for an extended period, including the period covered by this misconduct and he did, in fact, express an apology for his breaches.

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He sought, however, to diminish the significance of his breach of the undertaking by saying that, effectively, it was no more than a personal spat between two competitors between whom there was some bad blood. He also sought really to blur the aspect of the breach of the undertaking with a separate matter raised in the letter from Canning Craymer of 24th March 2004, and that is, the conditions upon which Canning Craymer would be prepared to release its complete file.

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As pointed out by Miss Cushing-Sullivan during the hearing, those were completely separate matters and it was misleading really for the respondent to seek to meld them. That also suggests a lack of real appreciation of the significance of an undertaking and the importance of compliance with undertakings

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given between practitioners in order to ensure proper service of clients.

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This is a case where there should be a public reprimand of the respondent under Section 280 subsection 2 paragraph E of the Legal Profession Act 2004, and also a fine. In setting the amount of the fine, we have regard to the importance of ensuring a fine of an amount that sends a proper signal, both to the practitioner and to the profession generally, of the significance attached to undertakings and the importance of proper compliance with them.

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The amount of the fine which we set is \$6,000 and there will be four months allowed to the practitioner for payment of that amount.

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The formal orders are that:

In respect of the first charge, there will be finding of professional misconduct;

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In respect of the second, there will be a finding of unprofessional conduct; and

In respect of the third, there will be a finding of statutory professional misconduct.

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There will be an order publicly reprimanding the respondent practitioner in respect of these findings.

There will additionally be an order that the respondent pay a penalty in the amount of \$6,000 within four months from today.

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THE CHIEF JUSTICE: The order will provide that the penalty is to be paid to the Legal Practitioner Interest on Trust Accounts Fund, established under section 208 of the Legal Profession Act 2004.

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THE CHIEF JUSTICE: The Tribunal intimates that in this particular case the destination - the preferred destination of the amount of a penalty should be either or both of the Fidelity Fund and the Supreme Court Library Committee.

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THE CHIEF JUSTICE: There will finally be an order that the respondent pay the applicant's costs of and incidental to the proceeding to be assessed unless agreed.

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