

# In the Matter of Clinton Ronald Smith

Case Number: SCT/99  
Date of Hearing: 2 May 2003  
Appearing Before: Mr P Cooper (Presiding Member/Practitioner Member)  
Mr M Byrom (Practitioner Member)  
Dr J Lamont (Lay Member)  
In Attendance: Mr J W Broadley (Clerk)  
Penalty: Fined \$7,500.00

## Charges

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

1. The Practitioner has committed unprofessional conduct or practice under section 3B(1)(a) and (c) of the *Queensland Law Society Act* 1952 (as amended) ("the Act") in that the Practitioner is guilty of serious neglect or undue delay and failure to maintain reasonable standards of competence or diligence.

### Particulars

- (a) On 11 September 1997 Mr & Mrs J ("the clients") consulted the Practitioner, then a sole practitioner practising as CRS at Broadbeach and instructed him to recover the sum of \$270,000.00 ("the monies") from Mr & Mrs M. The monies had been loaned by the clients to the Ms for the purchase and resale of prestige motor vehicles pursuant to an Agreement dated 25 March 1996 entered into between them. The Ms defaulted on the loan.
- (b) On 4 March 1998 Mr J advised the practitioner by telephone of the address for service of documents on the Ms.
- (c) On 4 June 1998 the practitioner wrote a letter to the Ms demanding payment of the monies within seven days failing which proceedings for recovery would be issued.
- (d) On 17 July 1998 the Practitioner instituted proceedings in the Supreme Court at Brisbane by Writ of Summons for recovery of the money plus interest plus costs.
- (e) The Writ of Summons was served on Mr M on 22 July 1998.
- (f) The Writ of Summons was served on Mrs M on 4 August 1998.
- (g) Thereafter nothing was done on the file until Mr M became bankrupt on 31 March 1999. On 21 May the Trustee of Mr M's bankrupt estate posted a circular to creditors advising that Mr M was bankrupt and seeking the lodgement of Proofs of Debt. The Practitioner was instructed by the clients to lodge a Proof of Debt with the Trustee.
- (h) Under cover of a letter dated 25 June 1999, the Practitioner forwarded a Proof of Debt to the clients for execution and return. In that letter the practitioner informed the clients that he understood that Mrs M "is to go bankrupt shortly".
- (i) On 1 July 1999 the proof of debt duly executed was forwarded to the Trustee.
- (j) The clients did not hear further from the Practitioner as to whether Mrs M became bankrupt.
- (k) When the clients had not heard from the Practitioner for some time Mr J made his own inquiries in or about April 2000 and ascertained that Mrs M had not become bankrupt.
- (l) The clients then attempted to contact the Practitioner to ask why Mrs M was not bankrupt. The clients spoke to the Practitioner's secretary no less than 40-50 times to be always told that the Practitioner would return their calls but this did not occur.
- (m) On 29 October 2000 the clients complained to the Queensland Law Society Inc ("the Society") of the failure by the Practitioner to return their phone calls.
- (n) On 27 November 2000 the Society wrote to the Practitioner pursuant to the provisions of section 5G(a) of the *Queensland Law Society Act* 1952 ("the Act") requiring a sufficient and satisfactory written explanation of the matters referred to in the clients' complaint by 19 December 2000.
- (o) The Society received a response from the Practitioner dated 22 December 2000 advising: "We will in the New Year after 8 January 2001 immediately attend to the issuing of bankruptcy proceedings against Mrs M."
- (p) On 25 January 2001 the Society wrote to the Practitioner advising that his letter of 22 December 2000 cannot be considered to be "a sufficient and satisfactory written explanation..." and requesting that he provide such a response no later than 1 February 2001.
- (q) On 2 February 2001 the Practitioner wrote advising that he had been away, had not actioned the matter and would do so promptly and confirm when the matter is completed.
- (r) On 15 February 2001 the Practitioner advised the Society that he had "... now recommenced proceedings against Mrs M which will be filed in Court in Brisbane this coming Monday and served immediately thereafter."

- (s) On 27 February 2001 the practitioner instituted fresh proceedings out of the Supreme Court of Queensland at Brisbane by filing Claim No 1890 of 2001 and Statement of Claim in the name of the clients as plaintiffs and the Ms as defendants claiming the monies and interest and costs.
- (t) On 5 March 2001 the Society wrote to the Practitioner advising that his correspondence had not provided a sufficient and satisfactory written explanation of the matters complained of by the clients in their letter dated 29 October 2000 and advised that a notice pursuant to section 5H of the Act will be issued if such an explanation was not received by the Society by 8 March 2001.
- (u) On 6 March 2001 the Practitioner wrote to the Society saying that he was keeping the clients abreast of developments directly and enclosed his latest letter to them dated 5 March 2001 saying: *"We advise that fresh proceedings are with the process server for service upon Mrs M."*
- (v) The letter from the Practitioner to the clients dated 5 March 2001 was hardly informative and in fact was misleading as the proceedings to which the Practitioner was referring were not bankruptcy proceedings, but in fact the fresh Supreme Court proceedings filed on 27 February 2001.
- (w) On 19 March 2001 the Society again wrote to the Practitioner requesting a written explanation within the next seven days otherwise a Statutory Notice would be issued.
- (x) On 21 March 2001 the Practitioner wrote to the Society with an explanation of his delay. The Practitioner advised that Mr J did ring him on several occasions chasing the matter up and asking for updates. The Practitioner admitted on some occasions he did not return the calls. The clients did not agree with that portion of the explanation. The Practitioner advised that he had not been able to proceed with the matter until February 2001 because in 2000 he was personally engaged in litigation which was debilitating and the pressures caused by it coupled with his usual workload put a strain on his capacity to work. As a result he had not taken a step in the matter for two years and advised that it was necessary for him to make an application to Court before proceeding.
- (y) On 27 April 2001 the clients contacted the Society once again because they had not heard anything from the Practitioner since his letter of 15 February 2001 despite the Practitioner's assurances to the Society that he would keep the clients informed. The clients did not receive the Practitioner's letter of 5 March 2001. The Society wrote to the Practitioner of these matters on 3 May 2001.
- (z) As a result the Practitioner contacted Mr M's trustee in bankruptcy to see if he had a current address at which the Supreme Court proceedings could be served upon Mrs M. The Trustee did not have an address for the Ms.
- (aa) On 14 May 2001 the Practitioner responded to the letter of 3 May 2001 from the Society and advised that he was unable to locate an address for service for Mrs M. The practitioner advised that he had contacted Mr M's trustee seeking a current address for the Ms and would keep the Society properly advised.
- (ab) On 21 June 2001 the Society wrote to the Practitioner and requested his advice as to whether Mrs M had yet been served with the proceedings by Friday 29 June 2001.
- (ac) On 29 June 2001 the Practitioner faxed a letter to the Society advising that the Practitioner had engaged a second inquiry agent to locate Mrs M and that if his inquiries were unsuccessful then he would make application to the court for substituted service.
- (ad) On or about 29 June 2001 Mr M's trustee in bankruptcy advised the Practitioner that he was not aware of the bankrupt's current residential address and did not have funds in the administration so as to allow him to investigate the whereabouts of the bankrupt.
- (ae) On or about 3 July 2001 the Practitioner engaged Q Pty Ltd to try and locate Mrs M.
- (af) On 5 July 2001 the Society wrote to the Practitioner acknowledging receipt of his letter 29 June 2001 and suggesting that he correspond directly with Mr & Mrs J in the future and trusting that the matter can now proceed satisfactorily. The Society advised that its file had been closed.
- (ag) On 6 August 2001 the Practitioner wrote to the clients enclosing a report from Q Pty Ltd which advised that they had been totally unsuccessful in locating Mrs M. The Practitioner sought any further information from the clients which may assist.
- (ah) Mr J telephoned the Practitioner's office on 10 August 2001 to speak with the Practitioner in regards to whether it is possible to place Mrs M into bankruptcy without serving documentation directly to her as this was the impression given previously to Mr J by the Practitioner. Mr J spoke to the Practitioner's secretary and was assured that the Practitioner would contact him later that day or at the very latest, on the following Monday. The Practitioner failed to return Mr J's telephone call.
- (ai) On 9 November 2001 Mr J wrote to the Practitioner complaining about the Practitioner's failure to return his phone call and to act in the proceedings in a timely manner.
- (aj) On 23 November 2001 the Practitioner wrote to the clients and advised that he would now make an application to the court for substituted service.
- (ak) On 26 April 2002 Mr J wrote to the Practitioner complaining that he'd heard nothing from the practitioner for five months since the Practitioner's letter of 23 November 2001 and seeking the Practitioner's advice as to the position of the matter.
- (al) On 3 May 2002 the Society wrote to the Practitioner advising that Mr J had kept the Society advised in relation to his endeavours to obtain up-to-date information as to the position of the matter and had provided the Society with a copy of Mr J's letter of 26 April 2002. The Society requested the Practitioner to provide a full explanation of the steps taken by the Practitioner to act in the best interests of the clients.

- (am) On 16 May 2002 the Practitioner responded to the Society by letter advising that inquiries had failed to locate Mrs M and that it was necessary to proceed by way of application for substituted service. The Practitioner would contact the Society once the application had been filed and a return date obtained.
- (an) On 20 May 2002 the Society wrote to the Practitioner and noted that the Practitioner knew the information contained in the Practitioner's letter dated 16 May 2002 when he wrote to the clients on 23 November 2001 and that an application still had not been made. The Society requested a full explanation of the steps taken by the Practitioner over the last 11 months by Friday 31 May 2002.
- (ao) On 3 June 2002 the Practitioner wrote to the Society and advised that it was now necessary for him to make an application to the Supreme Court to renew the Claim and Statement of Claim. The Practitioner said he would engage a further investigation agent to make inquiries as to Mrs M's whereabouts and upon receiving that report would proceed with an application for substituted service.
- (ap) On 18 June 2002 the Society required the Practitioner to provide the Society with the client's file pursuant to section 5G(c) of the Act.
- (aq) On or about 20 June 2002 the Practitioner provided the Society with his file.
- (ar) On 24 June 2002 the Society requested that the Practitioner provide the Society with the investigator's report together with an indication as to whether the information contained in the report warrants the bringing of an application for substituted service.
- (as) On 1 July 2002 the Practitioner provided the Society with a copy of the latest inquiry agent's reports into the whereabouts of Mrs and Mrs M. The investigator was unable to locate Mrs M, which amounted to a confirmation of results obtained from previous inquiries, which had been known by the Practitioner since at least May 2001. The Practitioner concluded that an application for substituted service had little prospects of success in the circumstances.
- (at) On 17 July 2002 the Society wrote to the Practitioner advising that the Practitioner's delay and neglect of the client's matter would be referred to the Professional Standards Committee for its consideration at the Committee's next meeting. The Practitioner was invited to provide any additional material to the Committee when the matter was considered.
- (au) On 11 September 2002 the Practitioner wrote to the Society advising that he was committed to having the matter come to a satisfactory conclusion for the clients and was making further inquiries with a view to locating Mrs M.

## 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 J N O'Donoghue, Solicitor of John Neive O'Donoghue, Solicitors
- (c) For the Complainants:  
There was no appearance on behalf of the Complainants

## Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge on page 6 by deleting the words "professional misconduct" and inserting the words "unprofessional conduct or practice".
2. The Tribunal finds the matters set out in the Notice of Charge, excluding particular 1(v), proved, and finds that those matters amount to unprofessional conduct or practice.
3. The Tribunal orders that the Practitioner pay a penalty of \$7,500.00 to the Fund.
4. The Tribunal further orders that the Practitioner, at his own expense, permit a senior practitioner appointed by the Queensland Law Society Incorporated to inspect his files and systems and to report to the Queensland Law Society at the expiration of 12 months from today.
5. The Tribunal further orders with the consent of the Practitioner, that the Practitioner pay to the Complainants, Mr & Mrs J, the sum of \$3,490.00 by way of monetary compensation, the Tribunal having been satisfied that the Complainants have suffered pecuniary loss as a result of the actions of the Practitioner.
6. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated, the Clerk and the recorder, such costs to be agreed or, failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
7. The Tribunal further orders that the compensation payment be made within 30 days of today.
8. In relation to payment of the penalty to the Fund, the Tribunal further orders that the amount be paid by consecutive equal monthly instalments over a period of six months, commencing 30 days from today.

## Reasons

The practitioner has been charged with committing unprofessional conduct or practice under section 3B(1)(a) and (c) of the *Queensland Law Society Act*, in that the practitioner is guilty of serious neglect or undue delay and a failure to maintain reasonable standards of competence or diligence.

This Charge is by its very nature a serious matter. The practitioner was consulted by Mr & Mrs J in September 1997. They instructed the practitioner to take action for them to recover a loan of \$270,000 from Mr & Mrs M. While the prospects of recovering any of the loan for Mr & Mrs J were slight, nevertheless the practitioner accepted the retainer from his clients, the practitioner failed to take action within the time that might reasonably have been expected of him, and he delayed in a number of respects, and in particular after filing and serving legal proceedings in July and August 1998.

The practitioner did nothing until Mr M was bankrupted on 31 March 1999. The practitioner also acted under the mistaken belief that Mrs M was also bankrupted and did nothing until April 2000 about taking bankruptcy proceedings against her until the practitioner was informed by Mr J that she was not bankrupt.

The practitioner also failed to properly respond to letters written to him by the Society over a significant period after a complaint was lodged by Mr & Mrs J with the Society.

The practitioner's delays are further evidenced by the litany of correspondence with the Society, and his failure to return numerous phone calls to the complainants. The practitioner's failure to maintain reasonable standards of competence and diligence are borne out on page 5 of the submission made by Mr O'Donoghue on behalf of the practitioner.

In making the orders, the Tribunal has taken into account the practitioner's affidavit, the references that were tendered to the Tribunal, and the medical evidence. It appears to the Tribunal that the manner in which the practitioner dealt with this particular matter was out of character and was an aberration in the way he would normally deal with transactions.

The Tribunal has also taken into account that the practitioner had pleaded guilty and has expressed remorse. The Tribunal does not believe that a striking off or a suspension is appropriate in this matter.