

In the Matter of Neil Bernard Lyons

Case Number: SCT/94
Date of Hearing: 11 February 2003
Appearing Before: Mr P Cooper (Presiding Member/Practitioner Member)
Mr M Byrom (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J Nimmo (Legal Ombudsman)
Mr J W Broadley (Clerk)
Penalty: Fined \$1,000

Charges

The Council of the Queensland Law Society Incorporated requires the Solicitor of 9 Goldpep Close, Runcorn in the State of Queensland, to answer the following charge:

The Solicitor, in breach of his obligations under section 16 of the *Trust Accounts Act 1973* ('Act'), failed to provide to the Queensland Law Society Inc ('Society') on or before 31 May 2002 an auditor's report for the financial period ending 31 March 2002.

At all material times the Solicitor carried on practice under the name NBL & Co at 13 Carnaby Street, MacGregor, Brisbane Queensland.

The Solicitor is and at all material times was a trustee within the meaning of that term in the Act.

Pursuant to section 16 of the Act, the Solicitor was obliged to give to the Society, as supervising entity, an auditor's report containing the information prescribed by regulation 23 of the *Trust Accounts Regulation 1999* within two months of the end of the financial period ending 31 March 2002, namely on or before 31 May 2002.

Despite letters dated 18 June, 29 July and 5 September 2002 requesting it, the Solicitor failed to give the Society the auditor's report by 31 May 2002 or at all.

The Society alleges that the charges constitute malpractice, professional misconduct/unprofessional conduct/practice and in the event of such charges being proved to the satisfaction of the Tribunal seeks an order that his name may be struck off the Roll of Solicitors of the Supreme Court of Queensland or that he be suspended from practice or such other order as the Tribunal may make pursuant to the *Queensland Law Society Act 1952*.

There is no claim for compensation to be considered by the Tribunal at the hearing.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr I Hughes, Solicitor of Messrs McCullough Robertson Solicitors
- (b) For the Practitioner:
The Practitioner appeared in person

Findings and Orders

1. The Tribunal orders that the time for service of the notice of charge be shortened from 28 days so that the matter may be heard today.
2. The Tribunal finds the charge proved and that the conduct, as admitted by the practitioner, amounts to unprofessional conduct or practice.
3. Upon the undertaking of the Practitioner to deliver the audit report set out in the Notice of Charge to the Queensland Law Society Incorporated within seven (7) days from today, the Tribunal orders as follows:
 - (a) the Practitioner pay a penalty of \$1,000.00 to the Fund;
 - (b) the Practitioner pay the costs of the Queensland Law Society Incorporated and the costs of the Clerk and the recorder to be agreed between the parties or failing agreement as assessed by Monsour Legal Costs Pty Ltd.
4. The Tribunal further orders that the Practitioner pay the penalty and costs within 28 days from any agreement or assessment of costs, whichever is the later.

Reasons

The practitioner pleaded guilty to the charge and admits that it amounts to unprofessional conduct or practice.

The Tribunal records that the practitioner has undertaken to deliver to the Society the audit report within seven days from today.

The Tribunal records that the practitioner has pleaded guilty to the charge, which has resulted in a saving in costs.

The Tribunal records that the practitioner has consented to the abridgement of time for the service of the Notice of Charge on him.

It has also recorded that the practitioner acknowledged the seriousness of not complying with the Society's correspondence.

In all matters dealing with a trust account, a practitioner must comply with all rules and this is a point that the profession generally should be aware of.

The Tribunal mentions that it wonders if this matter would be here today had the Society bothered to follow up the matter by way of some phone call.