SUPREME COURT OF QUEENSLAND

CITATION:	*A-G & Minister for Justice Qld v Priddle* [2002] QCA 297
PARTIES:	**QUEENSLAND LAW SOCIETY INC.** (applicant/not a party to appeal) **THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE QUEENSLAND** (dissatisfied party/appellant) **v** **LESLIE GORDON VICTOR PRIDDLE** (respondent/respondent)
FILE NO/S:	Appeal No 10905 of 2001 Solicitors' Complaints Tribunal Charge No 54 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	The Solicitors' Complaints Tribunal
DELIVERED ON:	16 August 2002
DELIVERED AT:	Brisbane
HEARING DATE:	24 May 2002
JUDGES:	McMurdo P, Williams JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs to be assessed.**
CATCHWORDS:	PROFESSIONS AND TRADES – SOLICITOR AND CLIENT – MISCONDUCT UNFITNESS AND DISCIPLINE – DISCIPLINARY ORDERS – SUSPENSION - where Solicitors' Complaints Tribunal found the respondent solicitor guilty of two charges of unprofessional conduct – where Tribunal ordered respondent solicitor be suspended from practice until June 30 2002 – where order made on undertaking of the respondent solicitor not to practise on his own account on an indefinite basis – whether sentence imposed was inadequate – whether sentence imposed reflected the gravity of the unprofessional conduct *Queensland Law Society Act* 1952 (Qld), s 3B, s 6A, s 6R, s 6U, s 6Z *Trust Accounts Act* 1973 (Qld), s 6(1) *Attorney-General v Kehoe*, [2001] 2 QdR 351, applied *Barristers' Board v Darvenzia* [2000] QCA 253, Appeal No 2107 of 2000, 30 June 2000, considered

	In re a Practitioner (1984) 36 SASR 590, considered *Mellifont v Queensland Law Society* [1981] QdR 17, considered
COUNSEL:	P A Keane QC, with G R Cooper, for the appellant A M Daubney SC, with L D Bowden, for the respondent
SOLICITORS:	Crown Solicitor for the appellant Hawthorn Cuppaidge & Badgery for the respondent

[1] **McMURDO P:** The respondent appeared before the Solicitors' Complaints Tribunal ("the Tribunal") on 30 October 2001 and was found guilty of two charges of unprofessional conduct.[1] The charges related first, to failing to keep or cause to be kept adequate accounting and other records of trust moneys as required by s 6(1) *Trust Accounts Act* 1973 (Qld), and second, failing to provide a beneficiary, Leslie William O'Brien or the Queensland Law Society Incorporated ("the Society") accounts of the application of the assets of the trust. The Tribunal ordered[2] that, upon the undertaking of the respondent solicitor not to practise on his own account on an indefinite basis, that he be suspended from practice until 30 June 2002 and that he pay the costs of the Society.[3]

[2] The appellant, the Attorney-General, appeals against that penalty,[4] contending that the sentence imposed was inadequate and does not reflect the gravity of the unprofessional conduct and the lengthy period over which it occurred. The appellant submits that on the Tribunal's findings the respondent was not then fit to practise his profession; the Tribunal did not identify any reasons which could satisfy it that the respondent would be so fit after 30 June 2002. Instead, the appellant seeks an order striking the respondent's name from the Roll of Solicitors of the Supreme Court of Queensland so that if the respondent wishes to be readmitted at some future stage, he must then prove his fitness to practise as a solicitor. The appeal concerns the appropriateness of an order for suspension, not the length of the order.

[3] The respondent was appointed trustee of the Bellalie Trust on 23 January 1979 which included trust moneys from the sale of "Bellalie", a rural property near Tara. He was then a lecturer in the Department of Commerce at the University of Queensland and consulted with a Brisbane city law firm. Leslie William O'Brien, the respondent's uncle, and Mr O'Brien's family were the beneficiaries. The respondent initially invested the trust moneys in bonds. In 1988 or 1989 he used $85,000 to purchase shares in four companies, purchases authorised under the deed of trust. The respondent also invested his own money and money on behalf of another trust (the Mason Estate Trust for which he was also a trustee) in these companies. Other "Bellalie" trust moneys were invested in the Top Water Partnership, a primary production partnership operating from a property adjacent to "Bellalie". A further $10,000 of trust moneys was lent to Mr O'Brien's daughter.

[4] For most of the period from 1 November 1991 until 30 January 1999 the respondent was a sole practitioner with an unrestricted practising certificate.

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1 *Queensland Law Society Act* 1952 (Qld), ss 3B, 6A.
2 Ibid, s 6R.
3 Ibid, s. 6U.
4 Ibid, s 6Z.

[5] The Top Water Partnership dissolved in 1993 and dividends of about $20,000 were distributed to the beneficiaries according to Mr O'Brien's oral directions. The remainder of the trust moneys continued to be invested in shares in the four companies. Between 1991 and 1995, the four companies were publicly floated and subsequently went into liquidation. Before May of 1995 at the latest, the money the respondent invested in the them was lost.

[6] A firm of Brisbane accountants kept the Bellalie Trust accounts until 1988, after which no proper accounting records were kept. In about May 1995, at the request of Mr O'Brien, the respondent, through his solicitor's practice, prepared some accounts for the trust consisting of balance sheets for the financial years ending June 1992, 1993 and 1994. These were not comprehensive financial accounts and did not state the name of the companies in which the investments had been made; they neither accurately reflected those investments nor showed that, at the time the accounts were prepared, the four companies in which the trust moneys had been invested were in liquidation and the investments lost. These facts constituted the first charge.

[7] On 12 August 1998, Mr O'Brien's solicitors wrote to the respondent requesting proper trust accounts. On 24 August 1998, the respondent advised that because the trust moneys were part of a combined investment portfolio with the Mason Trust Estate, which was currently involved in Supreme Court litigation, it would be impossible to complete the trust accounts. On 11 September 1998, the respondent told Mr O'Brien's solicitors for the first time that "his investments and his stewardship had not gone well but he will make sure that nobody loses a cent". The respondent's own financial difficulties did not permit him to keep this promise and he was declared bankrupt on 3 March 1999. Mr O'Brien made a complaint to the Society. On 23 July 1999, the Society informed the respondent of the complaint and sought an explanation, particularly as to the disposition of the trust assets. On 29 March 2000, the respondent informed the Society for the first time of the names of the four companies he had invested in on behalf of the trust but did not identify when each company went into liquidation and the investments lost. On 17 July 2000, the respondent confirmed that the trust moneys were placed in a series of investments in which he also invested his own money and moneys from the Mason Estate Trust and that those investments had failed. He claimed accounts would be prepared by new accountants within three weeks and that records, reconstructed to the best of his ability, would be available on or before Monday, 14 August 2000. On 20 October and 15 November 2000, the Society again sought information about these accounts from the respondent. On 27 February and 4 April 2001, the respondent's solicitors advised that they were experiencing difficulties in obtaining records. On 24 April 2001, the Society requested the respondent provide the best information available to him as to the trust investments. On 25 May 2001, the respondent's solicitors advised the Society that because of the unavailability of records the respondent could not provide any further relevant information. These facts constitute the second charge.

[8] The Tribunal found that the respondent's conduct was unprofessional, first in failing to keep proper records and accounts for the trust over a substantial period and, second, knowing that his investment of trust moneys had been unsuccessful he failed to provide Mr O'Brien or the Society with proper accounts; the accounting methodology he adopted and his approach in resulting correspondence was misleading and demonstrated delaying tactics and a lack of frankness.

[9] Suspension from practice rather than striking from the Roll of Solicitors is an appropriate order in cases of unprofessional conduct where a legal practitioner's behaviour has fallen below the high standards expected of such a practitioner but not in such a way as to indicate that the practitioner is lacking the necessary attributes of someone entrusted with the important responsibilities of a legal practitioner: *In re a Practitioner*[5] and *Barristers' Board v Darveniza*.[6] In *Attorney-General v Kehoe*,[7] Thomas JA, with whom the Chief Justice and Ambrose J agreed, observed:

> "Experience suggests that orders for striking off a practitioner are appropriate where the conduct reveals a practitioner to be a person unfit to exercise the powers and privileges afforded to solicitors. Suspension may be regarded as the next most serious level of punishment. It is appropriate in cases of relatively serious misconduct where the Tribunal or the court considers that suspension from practice for a designated period is called for and where it has reason to think that at the expiry of such period the practitioner will have learnt his or her lesson and will be of appropriate character to resume practise. It is recognised that orders for striking off or for suspension carry with them a strong element of disgrace and a serious element of economic loss through deprivation of the capacity to practise the profession for which the practitioner has been trained."[8]

[10] The power of the Tribunal to strike off or suspend is not punishment but rather focuses on the protection of the community from unsuitable practitioners.[9] As the appellant rightly contends, an order for suspension must be based on a finding that at the termination of the period of suspension the respondent will no longer be unfit to practise within the terms of the order.[10]

[11] The onus is on the appellant to show that the Tribunal's discretionary order was manifestly inadequate.[11]

[12] The respondent's disappointing unprofessional conduct was not found to be deceitful or dishonest; it was not suggested that he used trust moneys for his own purposes or profited by his behaviour: cf *Mellifont v Queensland Law Society*[12] and *In re a Practitioner*.[13] The respondent's conduct seems to have arisen from his difficulty in admitting to his relatives and the Society that his poor judgment was responsible for the loss of a substantial amount of trust money. Whilst this was a serious and concerning matter, it seems to have been the only lapse in his legal career.

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5 (1984) 36 SASR 590, 593; King CJ, with whom Zelling and Jacobs JJ agreed at 593.

6 [2000] QCA 253; Appeal No 2107 of 2000; 30 June 2000, [38].

7 [2001] 2 QdR 351, and see also *Barristers' Board v Darveniza* at [38].

8 At 357.

9 *Harvey v The Law Society of New South Wales* (1975) 49 ALJR 362, Barwick CJ, with whom all member of the court agreed, at 364.

10 *Law Society of New South Wales v McNamara* CA 160 of 1979, unreported, NSWCA, March 7, 1980, pp 7-8 referred to with approval by Andrews J(as he then was), with whom Connolly J agreed, in *Mellifont v The Queensland Law Society Inc* [1981] QdR 17, 31; *Attorney-General v Kehoe* at 357.

11 *Attorney-General v Kehoe*, at 358.

12 Ibid.

13 Ibid.

[13] Although not referred to by the Tribunal, there were personal circumstances which helped provide some explanation for the respondent's grossly unsatisfactory conduct.[14] In September 1993, the respondent was held hostage in his city office for 15 hours by a disturbed gunman. The siege ended when the respondent wrestled the gun from the man. The incident was followed by death threats against the respondent and his family. He had other financial, health and marital difficulties from 1995. Excellent character references were tendered, some of which referred to the siege and its effect on the respondent's health and judgment.

[14] The Tribunal was entitled to conclude in all the circumstances that an appropriate order was the suspension of the practitioner from practice, upon his undertaking not to practise on his own account on an indefinite basis. It was open to the Tribunal to be satisfied that at the expiry of the suspension period, having suffered public disgrace and humiliation as well as the economic loss resulting from his inability to practise his profession during this time, the respondent will have learnt his lesson. The Tribunal was also entitled to conclude that the suspension order provides sufficient public protection because it is combined with the respondent's undertaking not to practise on his own account for an indefinite period; with the protection of that undertaking the respondent could be entrusted with the important responsibilities of a legal practitioner. The appellant has not demonstrated that the Tribunal's order was manifestly inadequate.

[15] I would dismiss the appeal with costs to be assessed.

[16] **WILLIAMS JA:** For the reasons given by the President the appeal should be dismissed with costs.

[17] **MACKENZIE J:** I agree with the order proposed by the President for the reasons given by her.

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14 *In re a Solicitor* (1991) 105 FLR 137, Higgins and Foster JJ at 159.