

DISCIPLINARY HEARING REPORT OF PROCEEDINGS

On 13 August 2004 the Tribunal found the practitioner, Mr Kevin Penkin, guilty of unprofessional conduct in failing to respond to letters from the Legal Practitioners Complaints Committee (“the Committee”). By letter dated 25 November 2002, the practitioner was asked to respond to enquiries made on behalf of the Committee in the course of an investigation of a complaint by one of his former clients. The practitioner did not respond to the letter dated 25 November 2002 and the Committee wrote further to the practitioner on 6 January 2003 requesting a response. By facsimile dated 14 January 2003, the practitioner undertook to provide a response to the enquiry made in the letter dated 25 November 2002 by 20 January 2003, but failed to do so. A further letter was written to the practitioner on 31 January 2003 but he did not respond.

The practitioner said that his failure to respond to the Committee’s letters was caused, in part, by extreme financial difficulties he was then experiencing due to the failure by some of his major clients to pay debts which they owed him and, in part, by severe medical problems suffered by his wife and his two young sons. He said that those matters had made it difficult for him to attend in a timely way to all matters involving his practice including the enquiries of the Committee.

The practitioner acknowledged his obligation to respond promptly to enquiries from the Committee and said he deeply regretted having failed to do so in this matter. He admitted that he had been guilty of undue delay, but denied that that constituted unprofessional conduct.

On 13 August 2004 the Tribunal found the practitioner guilty of undue delay from 23 January 2003 to May 2003. By letter dated 8 January 2003 the Law Complaints Officer requested the practitioner to respond to complaints made against him by one

of his former clients. The practitioner failed to respond to that letter, and as a result the Complaints Officer wrote to the practitioner again on 5 February 2003, 14 February 2003, 4 March 2003 and 28 April 2003; on each occasion requesting a response. The practitioner failed to provide a response to any of that correspondence.

The practitioner wrote to the Law Complaints Officer on 21 May 2003 apologising for his failure to respond to previous correspondence, advising that his delay had been caused by his wife's medical problems and seeking an extension until 30 May 2003 within which to respond. The practitioner responded to the complaint the subject of the letter dated 8 January 2003 on 30 May 2003.

On 13 August 2004 the Tribunal further found the practitioner guilty of undue delay in that from on or about 26 February 2003 and thereafter he failed to respond to the Committee in relation to a complaint from another practitioner.

By letter dated 12 February 2003, the Committee wrote to the practitioner seeking a response to a complaint but the practitioner failed to respond to that letter and to further letters from the Committee to the practitioner dated 28 February 2003, 17 March 2003 and 23 May 2003.

The practitioner said that his failure to respond in this matter had resulted from the financial difficulties and family medical problems which had prevented him from responding in the previous two References. He admitted that he was guilty of undue delay.

In respect of each of the References, the Tribunal reprimanded the practitioner. The Tribunal ordered him to pay the Committee's costs of the References fixed at \$2,000.00 to be paid within 12 months, and that there be publication of the matter.

Mary-Anne Paton
Registrar
Legal Practitioners Disciplinary Tribunal
8 October 2004