

**LEGAL PRACTITIONERS'
DISCIPLINARY TRIBUNAL
AT DARWIN**

CITATION: *Bayram v Story and Law Society NT*
2022-01445-SC

PARTIES: **HANDE BAYRAM**
Appellant
v
DAVID STORY
First Respondent
And
LAW SOCIETY NORTHERN TERRITORY
Second Respondent

FILE NUMBER 2022-01445-SC

HEARING DATE 9 February 2023

DELIVERED 15 August 2023

TRIBUNAL MEMBERS: **MR ALASTAIR SHIELDS (CHAIRMAN)**
MS HEATHER KING (MEMBER)
MR TOM KORECKI (MEMBER)

REPRESENTATION:

APPELLANT: Self

FIRST RESPONDENT: Self

SECOND RESPONDENT: Mr Tass Liveris
Mr Aislinn McIntyre

REASONS FOR DECISION

1. On 6 June 2022, the Appellant filed a notice of appeal from the decision of the Law Society Northern Territory (Law Society) dated 17 May 2022 (the decision). The Law Society summarily dealt with part of one of the five complaints pursuant to section 499 of the *Legal Profession Act 2006* (the Act), and dismissed the other four complaints that the Appellant made against the First Respondent pursuant to section 498 of the Act.
2. An amended notice of appeal was subsequently filed on 8 June 2022 to include the First Respondent as a party.
3. Four of the five complaints were dismissed by the Law Society under section 498 of the Act, on the basis that the Law Society found that there was no reasonable likelihood that the First Respondent would be found guilty by the Legal Practitioners' Disciplinary Tribunal (Tribunal) of either unsatisfactory professional conduct or professional misconduct.
4. In respect of the other complaint, the Law Society found that it was reasonably likely that the Tribunal would find the First Respondent guilty of unsatisfactory professional conduct in relation to part of the complaint, and the balance of the complaint was dismissed. The Law Society was satisfied, pursuant to section 499 of the Act, that the matter could be dealt with summarily, and found that the First Respondent should be fined 5 penalty units (\$785) and publicly reprimanded via the Society's website for 12 months.
5. Each complaint concerned the First Respondent taking into his possession a quantity of jewellery and coins from a valuer at the Darwin Waterfront on 24 March 2019, and subsequently storing them in his safe for a period of time.
6. The Appellant has now appealed the Law Society's findings in respect of each of the five complaints.
7. The appeal was originally set down for a two day hearing on 9 and 10 February 2023, however the hearing concluded in the afternoon of 9 February, with none of the parties calling any witnesses.

Background

8. It is not disputed that the jewellery and coins the subject of the complaint were normally in the possession of the Appellant, and that their ownership and value were the subject of contested family law proceedings.
9. For the purposes of obtaining a valuation in the family law proceedings, the jewellery and coins were taken by the Appellant on 12 and 13 February 2019 to a valuer at the Darwin Waterfront.

10. The First Respondent acted for the Appellant's estranged husband in those proceedings.
11. On 21 March 2019, the Appellant received a text from the valuer to say that the valuation was completed; that the valuation and goods were ready for collection; and that the cost of the valuation was \$4,200.00. The Appellant then sent her estranged husband a text to ask him to pay for the valuation.
12. On 24 March 2019, after the valuation had been paid for by the Appellant's estranged husband, the First Respondent and the Appellant's estranged husband attended upon the valuer, and the First Respondent took possession of the jewellery and coins and ultimately deposited them in his safe.
13. Each of the 5 complaints concern the conduct of the First Respondent in taking possession of the jewellery, and his conduct concerning the jewellery at the time of collection and following collection. These issues will be addressed in some detail against each complaint.

Complaint to the Law Society

14. The Appellant made five complaints to the Law Society concerning the First Respondent on 14 May 2019, under section 471(1)(d) of the Act.
15. The five complaints are as follows:
 - a. Ground 1: In March 2019 or early April 2019 David Story the legal practitioner attended upon Pearl Galleria and took possession of jewellery and coins owned by Hande Bayram without the authority of Hande Bayram;
 - b. Ground 2. In March 2019 or early April 2019 David Story deposited jewellery and coins owned by Hande Bayram in his work safe without the authority of Hande Bayram;
 - c. Ground 3: Following the depositing of the jewellery and coins in the work safe David Story failed to immediately disclose his possession of the jewellery and coins to Hande Bayram or her legal representative;
 - d. Ground 4: David Story failed to enquire with or request details from Hande Bayram or her lawyer of the inventory of jewellery that had been delivered to Pearl Galleria by Hande Bayram and when David Story took possession of the jewellery and coins from Pearl Galleria David Story failed to carry out a reconciliation of the jewellery and coins delivered by Pearl Galleria to David Story. Had he carried out the reconciliation David Story would have known that from the goods

delivered a necklace, broken chain and two large sovereign gold coins ("the Missing Jewellery") were unaccounted for; and

- e. Ground 5: The issue of the location of various jewellery was a live issue between the parties in legal proceedings prior to Mr Story collecting the jewellery and coins. The failure by Mr Story to properly reconcile the jewellery and coins has aided his client's case and given an unfair advantage to his client as his client was able to make allegations that Hande Bayram had possession of the Missing Jewellery. It also caused additional legal costs to Hande Bayram in having to deal with false accusations made against her with regard to the Missing Jewellery.

Delays in the Investigation by the Law Society

16. Both the Appellant and the First Respondent raised as an issue the time taken in having the complaint investigated and resolved by the Law Society.
17. The First Respondent was particularly concerned about the length of time between the making of the complaint to the Law Society by the Appellant on 14 May 2019 and 7 August 2020, which was the date he was advised of existence of a complaint against him.
18. The First Respondent submitted that the existence of the complaint caused him to withdraw as the legal representative for the Appellant's estranged husband, and that this could have occurred much earlier had he been advised of the complaint at an earlier stage.
19. The Appellant indicated that the time taken for the complaint to be investigated and resolved caused her additional stress and anxiety in what was already a difficult time for her.
20. In the Submissions at the hearing, the Law Society acknowledged that its handling of this complaint did not meet the Society's performance indicators for the handling of complaints.
21. Although it is not the role of this Tribunal to make any findings about delays in the investigation and resolution of complaints, and the Tribunal notes that there are many reasons why a complaint may take considerable time to investigate and resolve, the Tribunal notes that a period of three years elapsed between the making of the original complaint to the Law Society in May 2019 and the Law Society's decision on the complaint in May 2022.

22. The Tribunal also notes that section 505 of the Act provides that “it is the duty of the Law Society to deal with complaints as efficiently and expeditiously as possible”.
23. In the Tribunal's view, it is in the public interest for complaints concerning legal practitioners to be investigated and resolved expeditiously, and the Tribunal recommends that the Law Society consider whether there are any measures that it can adopt to streamline the investigation and resolution process for complaints in future.
24. In making this recommendation, the Tribunal notes that it has not received evidence, nor made any finding, that any party to these proceedings suffered any actual prejudice, however the Tribunal notes that both parties have expressed the view that the delay has caused some distress and inconvenience on their part.

The Appeal Grounds

25. The Appellant's notice of appeal restated the 5 grounds outlined in paragraph 15 above, and stated that “I would like to appeal the [Law] Society's decision on the basis that the [Law] Society has not adequately considered the Ethics Committee recommendations regarding Grounds 1 to 4: and overlooked the significance and seriousness of the conduct of [the First Respondent] in regards to Australian Solicitor Conduct Rules, June 2011, and chose not to follow the recommendations that was the result of a long investigation”.

The Nature of Appeals from the Law Society to the Tribunal

26. This appeal to the Tribunal is by the Appellant under section 506 of the Act. The Tribunal is satisfied that the Appellant is an aggrieved person entitled to bring an appeal, and that the appeal was started within the 28-day period required by section 506(3) of the Act.
27. Section 507 of the Act provides that such appeals are by way of rehearing, and that the Tribunal is bound by the rules of evidence in conducting the hearing.
28. It is well accepted that the standard of proof in such appeals is the *Briginshaw* standard, namely the civil burden of proof on the balance of probabilities, but with due regard as to the seriousness of the allegations.
29. Section 511 of the Act provides that, on hearing the appeal, the Tribunal must:
- a. Affirm the Law Society's decision; or
 - b. Set the Law Society's decision aside and direct the Law Society to commence disciplinary proceedings in the Tribunal in relation to the whole or part of the complaint; or

- c. Set aside the Law Society's decision and take action that the Law Society could take under section 499(2) of the Act.

30. The Tribunal's powers in response to an appeal are limited to those set out in Section 511 and, because the Law Society has no power to order compensation in making its decision, the Tribunal has no power to award compensation or damages as an outcome of this appeal. The Tribunal can only order compensation in proceedings under Part 4.11 of the Act.

Findings on Appeal

31. In respect of each of the 5 complaints the subject of this appeal, the Tribunal makes the following findings and determinations:

Ground 1.

- i. It is not disputed that when the First Respondent accepted the jewellery from the valuer on 24 March 2019, he did so without any authority on the part of the Appellant to do so.
- ii. There is however evidence before the Tribunal to the effect that: the day that the jewellery was collected was the valuer's last day of trading; the valuer was planning to leave Darwin; the jewellery was collected on a Sunday; ownership of the jewellery was a live issue in the family court proceedings involving the Appellant and her estranged husband; and the valuer did not wish to release the jewellery to the Appellant's estranged husband.
- iii. In all of these circumstances, the Tribunal accepts that the First Respondent's decision to accept the jewellery, in what has been described as "emergency" or "unusual" circumstances, was reasonable.
- iv. The Tribunal therefore affirms the Law Society's decision to dismiss Ground 1 of the complaint.

Ground 2.

- v. Again, it is not disputed that when the First Respondent stored the jewellery in his work safe on or after 24 March 2019, he did so without any authority on the part of the Appellant.
- vi. However, having accepted that the First Respondent's decision to accept the jewellery in "emergency" or "unusual" circumstances on a Sunday was reasonable, it therefore follows that it was reasonable for the First Respondent to take immediate steps to secure the jewellery in a safe location, given

that he had a duty to properly secure and maintain property entrusted to him for safekeeping.

- vii. The Tribunal therefore affirms the Law Society's decision to dismiss Ground 2 of the complaint.

Ground 3.

- viii. Given the "emergency" or "unusual" circumstances under which the jewellery was collected by the First Respondent, it is the Tribunal's view that it was incumbent upon the First Respondent to promptly notify the Appellant's legal representative that he had accepted the jewellery and was storing it for safekeeping.
- ix. The First Respondent accepted the jewellery on Sunday, 24 March 2019. Had this occurred on an ordinary working day, the Tribunal would have expected the First Respondent to notify the Appellant's legal representative that he had accepted the jewellery (or was proposing to accept it) either immediately before or immediately after the jewellery came into his possession. Given that the jewellery was collected on a Sunday, the Tribunal would have expected the First Respondent to make the notification on the next business day at the latest.
- x. In his written submissions and oral evidence during the appeal, the First Respondent placed reliance upon an instruction from his client not to disclose to the Appellant that he had possession of the jewellery. The First Respondent acknowledges that the instruction was "mean-spirited" but made it clear that he considered it to be a lawful instruction.
- xi. The Tribunal is concerned to note that there was also some suggestion by the First Respondent in his oral submissions to the Tribunal on the appeal that such actions are part of the way in which family law proceedings are routinely conducted.
- xii. The First Respondent compared his failure to disclose that he had possession of the jewellery with the failure of the Appellant's legal representative to disclose that his client had made complaints to the Law Society. He then observed at the hearing on 9 February 2023 that "This is the nature of family law proceedings. It is an unhappy jurisdiction to work in. Regrettably, I have been doing it for 45 years. I am a bit tired of it, because this is where you finish up."

- xiii. There is evidence that the family law proceedings were contested, and that the First Respondent was aware of the emotional attachment the parties had to the jewellery. The First Respondent also allowed his client to make allegations about missing items from the valuation report when the jewellery was in his safe.
- xiv. The Tribunal agrees with the Law Society that the Appellant's estranged husband's instruction to wait 7 days before notifying the Appellant's legal representative did not provide any justification for the period of delay.
- xv. The Tribunal also agrees with the Law Society that "[a] lawyer is not the mere mouthpiece of his client and a lawyer is required to maintain their independence and evaluate the instructions that they receive from their clients to determine whether they can follow those instructions, act in their client's best interests and still behave ethically and in accordance with their higher duties as officers of the Court".
- xvi. It is clear to the Tribunal that the First Respondent did not conduct such an evaluation of his client's instructions, and that he seeks to rely upon those instructions as justification for the 11-day period that elapsed from the time that he accepted the jewellery until the time that he states that he sent an email to the Appellant's legal representative (noting that this email was never received).
- xvii. Because the First Respondent did not conduct an evaluation of his client's instructions, it is the Tribunal's view that it is therefore not necessary to further consider whether the 11-day period that elapsed is within the outer limit of the acceptable time period for notifying the Appellant's legal representative.
- xviii. Had the Tribunal been required to make a finding in respect of whether the 11 day time period is within the outer limit of what was acceptable, the Tribunal would have concluded that 11 days, in all of the circumstances, was an unacceptable delay.
- xix. The Tribunal is satisfied that there is a reasonable likelihood that the First Respondent would be found by the Tribunal to have engaged in unsatisfactory conduct or professional misconduct. Accordingly, the Tribunal sets aside the Law Society's decision in respect of this ground of the complaint.

- xx. The Tribunal has also considered whether it would be appropriate for a summary conclusion of the complaint under section 499(2) of the Act, and has concluded that the seriousness of the complaint warrants disciplinary proceedings before the Tribunal.
- xxi. In accordance with section 511(1)(a)(ii) of the Act, the Tribunal directs the Law Society to start disciplinary proceedings in the Tribunal in respect of this ground of the complaint.

Ground 4

- xxii. There is conflicting evidence before the Tribunal as to whether the bag of jewellery was stapled closed by the valuer or by the First Respondent when the First Respondent accepted it on 24 March 2019. The Tribunal considers that nothing turns on this.
- xxiii. The issue for consideration is what steps the First Respondent should have taken to identify and verify what items were being taken into his possession.
- xxiv. In this regard, the Tribunal considers that the First Respondent did not have access to the original list of items that has been prepared by the Appellant and checked when the items were delivered to the valuer, and that he was not under an obligation to obtain it and verify the return of each item.
- xxv. The Tribunal however considers that, having decided to take the items into his possession in “emergency” or “unusual” circumstances, the First Respondent was under an obligation to verify and itemise the items before taking them into his possession.
- xxvi. The Tribunal accepts that it may have been difficult to arrange this, given that the valuer was closing her shop that day, and the First Respondent was under the impression that the items had already been checked by his client.
- xxvii. However, the Tribunal considers that the First Respondent should have insisted that an itemisation occur, overseen by the valuer or an independent witness, prior to accepting the items.
- xxviii. The Tribunal agrees with the finding of the Law Society that the actions of the First Respondent on this issue fell substantially short of what is required by a legal practitioner, and the Tribunal finds that there is a reasonable likelihood that the First Respondent would be found by the Tribunal to have engaged in unsatisfactory conduct or professional misconduct.

- xxix. The Tribunal has also considered whether it would be appropriate for a summary conclusion of the complaint under section 499(2) of the Act, and has concluded that the seriousness of the complaint warrants disciplinary proceedings before the Tribunal.
- xxx. In accordance with section 511(1)(a)(ii) of the Act, the Tribunal directs the Law Society to start disciplinary proceedings in the Tribunal in respect of this aspect of ground 4 of the complaint.
- xxxi. The Tribunal affirms the decision of the Law Society to dismiss the balance of ground 4.

Ground 5

- xxxii. This ground of the complaint does not disclose any additional factual circumstances not covered under grounds 1-4, but rather provides additional material to support those grounds.
- xxxiii. The allegations that the First Respondent's conduct caused additional costs for the Appellant and gave the Appellant's estranged husband an advantage in the family law proceedings can be dealt with as part of the assessment of the First Respondent's conduct in complaints 3 and 4.
- xxxiv. The Tribunal therefore affirms the Law Society's decision to dismiss Ground 5, or in the alternative finds that the allegations and conduct the subject of that ground can be dealt with in consideration of the other grounds of the Complaint.
- xxxv. The Tribunal's expectation is that, to the extent that they are relevant, the Law Society will have regard to the matters raised in ground 5 in preparing its application to the Tribunal in accordance with section 511(1)(a)(ii) of the Act.

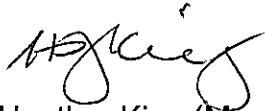
Orders

- 32. The Tribunal affirms the decision of the Law Society in respect of grounds 1, 2 and 5 of the original complaint.
- 33. In respect of ground 3 of the original complaint, and that part of ground 4 of the complaint that raises the First Respondent's failure to identify and verify the items taken into his possession, the Tribunal sets aside the Law Society's decision and directs the Law Society in accordance with section 511(1)(a)(ii) of the Act to start disciplinary proceedings in the Tribunal.

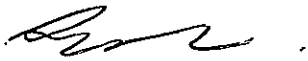
34. Parties have liberty to apply.

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Alastair Shields (Chair)

A handwritten signature in black ink, appearing to read 'Heather King', written in a cursive style.

Heather King (Member)

A handwritten signature in black ink, appearing to read 'Tom Korecki', written in a cursive style.

Tom Korecki (Member)