

**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 125

Submittor: Mr Michael Spaulding
101 Norma Street
Howrah
HOBART TAS 7018

M.J.Spaulding
101 Norma St.
Howrah
Hobart
Tas 7018



2nd May 2001

Senator Nick Sherry

The Chairperson
Senate Select Committee on Superannuation and Financial Services
Parliament House
Canberra
ACT 2600

Dear Sir

I am not fully conversant with the terms of reference of your senate enquiry in relation to the Law Society of Tasmania.

However my submission to the enquiry is on the basis of:

[a] That the Spaulding family was used as a financial institution by Mr Colin Adams Practitioner and partner in the legal firm of Page Seager and Mr Stephen Knight Practitioner in the legal firm of Dobson Mitchell & Allport.

[b] That monies belonging to Allscrap Pty Ltd and Sandman No 4 Pty Ltd [Spaulding family companies] was accessed by Colin Adams Practitioner without the permission or knowledge of the then company directors to meet payments due and owing to Pasedo Nominees the financial arm of Page Seager. The Company directors at the time were Mr Peter Nielson and my mother in law Ms Barbara Young. This occurred on numerous occasions while Mr Adams [in his capacity as Solicitor] was a Trustee of the Spaulding family Trust No 1 and while my personal shares **only** in those companies were held by Mr Adams

[c] That Mr Adams Practitioner became a trustee of the Spaulding family trust No1 and a trustee share holder in both Allscrap Pty Ltd and Sandman No 4 Pty Ltd and did so knowing that he was in a conflict of interest situation with the Spaulding family and those companies It is my belief that this constitutes a fiduciary breach by Mr Adams.

[d] That Mr Peter Nielson did become a company director of both Sandman No 4 Pty Ltd and Allscrap Pty Ltd when he was in a conflict of interest situation with those companies and the Spaulding family again a breach of fiduciary duties by Mr Nielson

Allscrap Pty Ltd and Sandman No 4 have both been deregistered and the assets of those companies gone and occurred while under the control and management of Mr Adams and Mr Nielson and the reason why this happened will become apparent after I

have detailed my submission to the Senate.

A brief summary of my dealings with the Law Society of Tasmania

In 1992 I made formal complaints to the Law Society about the professional conduct of Mr Colin Adams. Twelve months later the Law Society informed me that they would investigate my complaints and that Mr Greg Melick Practitioner [a well known criminal lawyer in Hobart at the time] would be Counsel for the Law Society.. I spent over twelve months with Mr Melick and in 1994 was informed by the Society that Mr Adams had no case to answer for either unprofessional conduct or professional misconduct. As there was no Legal Ombudsman we had few options opened to us as my wife and I had been made Bankrupt in 1990 by way of a creditors petition and as a result had no financial resources at our disposal.

I continued vigorously with my complaints to the Society to no avail up till the time the office of the Legal Ombudsman came into existence. I eventually took my original complaint to the Society and those after to Judith Paxton the Legal Ombudsman. Judith Paxton intern gave my complaints to Simon Austin at the Crown Solicitors department who informed Ms Paxton that my original complaint to the Society stood in its own right

In the mean time I had made contact with our then trustee in Bankruptcy, Senator Paul Calvert, Mr Ray Groom, Mr Peter Patmore, The Public Prosecutor Mr Demean Bugg, Legal Aid, Australian Securities Commission and The Commonwealth Police

.Bankruptcy and the Australian Securities commission treated my wife and I as if we were dirt and because of what Mr Nielson and Mr Adams told our trustee in Bankruptcy we had to remain Bankrupt for a period five years. Due to the efforts of the Legal Ombudsman Mr Peter Patmore and myself I have now been informed by the Society [letter attached] that the Society are now taking Mr Adams to the Supreme Court in relation to professional misconduct brought about by Mr Adams being in a conflict of interest situation with the Spaulding family.

My complaints have not changed yet back in 1994 that conflict of interest situation did not exist in the eyes of the Society.

Please find enclosed memorandum of advice in relation to my formal complaints to the Society together with supporting documents and I would hope that my submission will be included in the Senate enquiry. My experience with the Society can only be described as a nightmare that has persisted for nine years and still happening.

Yours faithfully



Michael Spaulding

THE LAW SOCIETY

O F T A S M A N I A

28 MURRAY STREET, HOBART 7000, G.P.O. BOX 1133
AUSDOC DX111, TELEPHONE: (002) 34 4133 (002) 33 3002 FAX: (002) 23 8240

Our ref: C92/79:DHP/BB

25 February, 1993.

Mr M Spaulding,
14 Derwent Street,
BELLERIVE 7018.

Dear Mr Spaulding,

re: Complaint against C Adams: C92/79

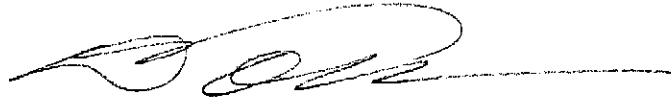
I refer to the writer's discussion with you on the 23rd February last, and confirm that Mr Greg Melick of Gunson Pickard & Hann has been retained by the Society to expeditiously investigate the complaints you have made against Mr Colin Adams.

Mr Melick will be contacting you direct to facilitate his enquiries - if he has not already done so by now.

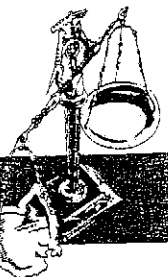
I also reiterate my previous advice to you on a number of occasions. In particular, that Mr Melick is carrying out a disciplinary process. He has not been retained to investigate or carry out any civil proceedings or to pursue recovery of damages or the like for any negligence by Mr C Adams. That is an entirely separate matter that must be pursued by you in a different forum and as you see fit.

I trust this fully explains the position. If, however, you still have any queries, then please contact the writer on this issue.

Yours faithfully,



D H POLDEN,
ACTING EXECUTIVE DIRECTOR.



THE LAW SOCIETY
O F T A S M A N I A

28 MURRAY STREET, HOBART 7000, G.P.O. BOX 1133
AUSDOC DX111, TELEPHONE: (002) 34 4133 (002) 33 3002 FAX: (002) 23 8240

Our ref: C92/79:AJMcM/BB

27 January, 1994.

Mr M Spaulding,
14 Derwent Street,
BELLERIVE 7018.

Dear Sir,

re: Complaint - Mr C Adams

I refer to our phone conversation of the 25th January, 1994, and confirm my advice that the Investigating Committee of the Law Society has decided that the available information does not warrant any proceedings being taken against Mr Adams by the Society for professional misconduct or unprofessional conduct.

As you are aware, the Society instructed Mr Melick who conducted a detailed and wide-ranging investigation into the matters raised by you. I might add that this was at a considerable expense to the Society.

Mr Melick provided a comprehensive and detailed written report to the Society which was thoroughly considered by the members of the Investigating Committee when it met on the 24th January, 1994.

The Committee was of the opinion that, on the information contained in the report there was no real prospect of any prosecution against Mr Adams being successful. Thus, it was decided that the information did not warrant the commencement of any such prosecution.

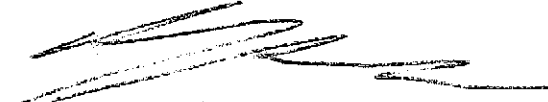
I also confirm that the written report from Mr Melick was provided on a confidential basis to the Investigating Committee and hence is not available for release to you.

As I have previously advised you, the Society's role is limited to investigating allegations of professional misconduct or unprofessional conduct, i.e. ethical breaches by legal practitioners. The Society does not have the power to take proceedings against legal practitioners on behalf of clients or ex-clients to recover any financial loss suffered as a result of alleged negligence by legal practitioners. Any such proceedings claiming such damages for negligence can only be brought directly by the client or ex-client against the practitioner through the normal Court system. You, of course, are quite entitled to commence your own legal proceedings against Mr Adams to recover any financial loss which you allege you have suffered as a result of any alleged negligence on Mr Adams' part.

Even though the Society has decided not to institute proceedings against Mr Adams for professional misconduct or unprofessional conduct, you do have the right to bring such proceedings yourself against Mr Adams.

If you have any further queries, please do not hesitate to contact me.

Yours faithfully,


A J McMAHON,
EXECUTIVE DIRECTOR.

28th AUSTRALIAN LEGAL CONVENTION
WREST POINT HOTEL, HOBART. SEPTEMBER 26 TO SEPTEMBER 30, 1993



THE LAW SOCIETY

O F T A S M A N I A

28 MURRAY STREET, HOBART 7000, G.P.O. BOX 1133, HOBART, 7001
AUSDOC DX 111, TELEPHONE: (03) 6234 4133 (03) 6233 3002 FAX: (03) 6223 8240
e-mail: taslawsoc@vision.net.au
ABN 79607763856

Our ref: C 92/79 & C99/75:JMM/VMC

27 March 2001

Mr M J Spaulding
101 Norma Street
HOWRAH TAS 7018

Dear Sir

COMPLAINT AGAINST MR COLIN ADAMS

I refer to previous correspondence in the matter of your complaint against Mr Colin Adams.


I advise that, acting on advice obtained from Counsel, and taking into account all of the evidence it had before it, the Council of the Law Society at its meeting on 24 March 2001 resolved to refer to the Supreme Court allegations of professional misconduct against Mr Colin Adams arising out of your complaint.

Counsel will be instructed to immediately prepare and commence the proceedings without delay.

As we have no way of knowing whether these proceedings will be held in open Court or not, may we suggest that at this stage you treat this matter with some degree of confidentiality until such time as the Court proceedings are under way.

You will be kept informed of developments as they occur.

Yours faithfully


JAN MARTIN
EXECUTIVE DIRECTOR

LAW SOCIETY OF NEW SOUTH WALES v. HARVEY †

Court of Appeal: Street C.J., Moffitt P. and Hutley J.A.

Feb. 10-13; March 20, 1975.

Legal Practitioners—Solicitor, with his clients' uninformed consent, mingling his own and his clients' affairs, to his advantage and their disadvantage—Such actions neither "inadvertent" nor "innocent", but activated by solicitor's own self interest—Solicitor unfitted to be a solicitor, or to be employed in a solicitor's office in any capacity.

In proceedings for an order striking the defendant off the roll of solicitors, the Court found, in relation to the lending of money by his clients to three companies in which he was a director and shareholder, and which engaged in speculation in real estate (i) that, in a substantial and sustained way, he had mixed his clients' affairs with his own; (ii) that he had grossly preferred his own interests to those of his clients, to their financial detriment; (iii) that he had failed to make proper, and in some cases any, disclosure to his clients of his interest, or the risks involved in the proposed investment; (iv) that he had failed to give his clients proper advice concerning such investment, or that they should seek independent legal advice, and (v) that, in some cases, he had invested clients' money in unauthorized investments.

Held: (1) It is an essential feature of the relationship between solicitor and client that the client is entitled to the full benefit of the best exertions of the solicitor, and that the solicitor shall not be permitted to make a gain for himself at the expense of his client, beyond the amount of the just and fair professional remuneration to which he is entitled.

Tyrrell v. Bank of London (1862) 10 H.L.C. 26, at pp. 39, 40, 44; 11 E.R. 934, at pp. 939, 940, 941, followed.

(2) Where there is found to be any conflict, however fortuitous, between the interest of the solicitor and that of the client, it is the duty of the solicitor, acting in perfect good faith, to make a complete disclosure of his interest. A less than complete disclosure may positively mislead.

(3) In such a case, the solicitor should, in addition, at the very least, advise the client to take independent legal advice, and should, except in the most exceptional cases, cease to act for the client.

(4) A solicitor should not expressly propose that his client deal with him, or with a company in which he has an interest, even upon the basis that the client will seek independent legal advice. Indeed, a solicitor should take all reasonable steps to avoid dealing directly, or indirectly, with his client.

Bonds & Securities (Trading) Pty. Ltd. v. Glomex Mines N.L. [1971] 1 N.S.W.L.R. 879, at p. 891, applied.

(5) A solicitor should not normally act as a business consultant or loan broker, and, if he does, he will be precluded, by the very relationship between himself and his client, from commending to the latter a loan to a company, or for a venture, in which he himself has an interest.

(6) In the present case, the solicitor had, on a grand scale, extending over some years, mingled his clients' and his own affairs, to his advantage and to his clients' disadvantage. This was not due to any lack of commercial or legal experience, but to the pressure of his own self interest. His actions were neither "inadvertent" nor "innocent" (as he asserted in

† [EDITOR'S NOTE: An appeal from certain of the ancillary orders made in this case was allowed; see *Harvey v. Law Society of New South Wales* (1975) 49 A.L.J.R. 362.]

Additional
Attachments
not authorised for publication.

N.S.W.L.R.)

LAW SOCIETY OF N.S.W. v. HARVEY (Street C.J.)

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evidence), but were deliberate, and in some cases dishonest, indeed, though authorized by his clients, little better, in point of moral culpability, than misappropriation of funds for use in private speculative ventures.

(7) The defendant was unfitted to be a solicitor, or to be employed in a solicitor's office in any capacity, and his name should be removed from the roll of solicitors.

CASES CITED.

The following cases are cited in the judgment of the Court:

Bonds & Securities (Trading) Pty. Ltd. v. Glomex Mines N.L. [1971] 1 N.S.W.L.R. 879.

Law Society of New South Wales. Ex parte; Re Demer [1967] 1 N.S.W.R. 167.

Templeton v. Leviathan Proprietary Ltd. (1921) 30 C.L.R. 34.

Tyrrell v. Bank of London (1862) 10 H.L.C. 26; 11 E.R. 934.

The following additional cases were cited in argument:

Clyne v. New South Wales Bar Association (1960) 104 C.L.R. 186.

Mayes and the Legal Practitioners Act, Re [1974] 1 N.S.W.L.R. 19.

Myers v. Elman [1940] A.C. 282.

New South Wales Bar Association v. Evatt (1968) 117 C.L.R. 177.

Skinner v. Beaumont [1974] 2 N.S.W.L.R. 106.

Thom, Re; Ex parte the Prothonotary (1962) 80 W.N. (N.S.W.) 968.

SUMMONS.

The plaintiff sought a declaration that the defendant had been guilty of professional misconduct as an attorney, solicitor and proctor of the Court, and, inter alia, an order that his name be struck off the roll of solicitors, or for such other orders as the Court deemed fit.

A. B. Kerrigan Q.C., C. Darvall Q.C. and M. J. R. Clarke, for the plaintiff.

T. R. Morling Q.C., P. W. Young and N. R. Burns, for the defendant (solicitor).

Cur. adv. vult.

March 20.

The judgment of the Court was delivered by Street C.J.

STREET C.J. On 10th September, 1974, the Law Society of New South Wales by summons moved this Court for a declaration that the defendant, Ian James Harvey, had been guilty of professional misconduct as an attorney, solicitor and proctor of the Court, and sought inter alia, an order that the defendant be struck off the roll of solicitors or for such other orders the Court deemed fit. On the same date this Court made an ex parte order appointing a receiver of the defendant's trust account, which order has been continued to this hearing.

Voluminous affidavits have been filed before us, including four made by the defendant. In his final affidavit, dated 7th February, 1975, he indicated that, upon reflection, he appreciated that he was seriously at fault in the handling of some of his clients' affairs, and that he had committed serious breaches of his duty as a solicitor. He asserted that no dishonesty was involved, and that, at the time, he was not conscious of any shortcoming. In his oral evidence, he claimed that any breaches of duty were due to