

Media Release

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Solicitor struck-off over executor's commission offences

A former Gippsland solicitor with over 45 years' experience has been struck-off by the Supreme Court of Victoria after the Victorian Civil and Administrative Tribunal earlier found him guilty of professional misconduct conduct.

In September 2015, VCAT found **Mr Philip Hamilton Rhoden** guilty of 21 charges of professional misconduct after he took over \$350,000 in executor's commissions from eight deceased estates without proper consent.

The Victorian Legal Services Commissioner brought the charges against Mr Rhoden after he failed to provide estate beneficiaries with full information or to obtain fully informed consent before making claims for commissions against several estates when he had no entitlement. The Commissioner also told VCAT Mr Rhoden had failed to provide testators with written advice about charging clauses when drafting wills.

VCAT was told that Mr Rhoden had misled the beneficiaries for his own personal benefit. In one matter where two estate beneficiaries were under the care of the State Trustee, Mr Rhoden procured the Trustee's consent to a commission payment by falsely representing that the other beneficiary had already consented to the payment. Mr Rhoden then used the Trustee's consent to procure consent from the remaining beneficiary.

VCAT also heard that Mr Rhoden had withheld distributions to beneficiaries in numerous estates until they agreed to pay executor's commission, including in one matter in which he obtained consent to payment of a commission of \$660,000, of which he claimed a third.

VCAT found that in each case Mr Rhoden had failed to provide the beneficiaries with sufficient information to enable them to give fully informed consent about executor's commission.

In his defence, Mr Rhoden said that he had expressed his remorse for his actions by pleading guilty to all charges. VCAT, however, found Mr Rhoden had not in fact demonstrated remorse, nor had he show any insight into his conduct. In particular, VCAT noted Mr Rhoden's criticisms of the testators' families as often being dysfunctional, and his insistence that none of the beneficiaries complained about his commissions. Indeed, Mr Rhoden suggested that any dissatisfaction that the beneficiaries now felt was a result of the Commissioner's investigation, which drew attention to the shortcomings of his conduct.

VCAT found Mr Rhoden guilty of 21 counts of professional misconduct and reprimanded him on each of those charges. Mr Rhoden was ordered to pay restitution to the eight estates totalling \$357,382.92, and to pay a further \$26,766 for the Commissioner's costs.

Mr Rhoden gave VCAT an undertaking that he would never again apply for a practising certificate in any Australian jurisdiction.

Strike off

Given the nature and duration of the offences, VCAT also recommended to the Supreme Court of Victoria that Mr Rhoden's name be removed from the roll of legal practitioners.

On 2 March 2016, the matter was heard before the Court. The Honourable Justice John Dixon accepted VCAT's findings that Mr Rhoden had acted dishonestly in a number of matters over the four years to which the disciplinary charges related, and that he had displayed neither remorse nor timely insight into his behaviour. The Court noted that

Mr Rhoden had preferred his own interests to those to whom he owed a strict fiduciary duty, and that theft in the course of legal practice was most odious conduct for a person on the roll of practitioners.

Highlighting the importance of protecting future clients from such conduct, the Court ordered Mr Rhoden's name be struck from the roll of legal practitioners maintained by the Court.

Mr Rhoden did not contest the strike-off application by the Commissioner, and did not appear in Court.

For further information, [download the September 2015 VCAT decision](#). The Supreme Court decision will shortly be available from the Supreme Court of Victoria.

Ends