



PARLIAMENT OF NEW SOUTH WALES

JOINT SELECT COMMITTEE ON VICTIMS COMPENSATION

Third Interim Report:

***Complaint by the Walsh Family
concerning Rakus Solicitors***

June 1998

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TERMS OF REFERENCE

The House resolved on 27 November 1996, on the motion of Mr Whelan:

- “(1) That a Joint Select Committee be appointed to inquire and report on:
- (a) alternative methods of providing for the needs of victims of crime, in particular that of providing counselling and other services to victims. In examining these alternatives, the Committee should have regard to:
 - (i) the total cost both initially and over time of any alternative examined by the Committee in comparison with the cost of continuing the Victims Compensation Fund, either in its present form or any amended form;
 - (ii) the competing demands of other sectors of the community for public funds and the desire to have greater certainty and control over the cost of the Fund;
 - (iii) the extent of services already available to victims of crime, being either specific services or general services which may be accessed by victims of crime;
 - (iv) any duplication in or the need to enhance these services; and
 - (v) the possibility and means of funding any alternative other than through public funds; and
 - (b) the long term financial viability of the Victims Compensation Fund, having regard to:
 - (i) any projected or actual increase in the take up rate by eligible victims;
 - (ii) any projected or actual increase in number and size of awards;
 - (iii) any projected or actual increase in the size of awards through the appeal process;
 - (iv) the effect upon costs of different threshold claim levels;
 - (v) the effect upon costs of monetary compensation being limited to victims of crime with serious or permanent injuries;
 - (vi) the availability of sources of funding other than the Consolidated Fund and the costs that may be incurred in collecting these funds; and
 - (vii) any changes in the administration of the Victims Compensation Fund or the process of assessing awards which may restrain escalation costs.

- (2) That the Committee consist of 5 Members of the Legislative Assembly and 4 Members of the Legislative Council.
- (3) That the Legislative Assembly Members comprise:
 - (a) 3 Government Members nominated in writing to the Clerk of the House by the Leader of the House; and
 - (b) 2 Opposition Members nominated in writing to the Clerk of the House by the Leader of the Opposition.

On 5 December 1996, the Legislative Council resolved:

- (1) That this House agrees to the Legislative Assembly's Message of 27 November 1996 for the appointment of a Joint Select Committee on Victims Compensation.
- (2) That the Legislative Council members of the Committee comprise:
 - (a) 2 Government Members nominated in writing to the Clerk of the House by the Leader of the Government;
 - (b) 1 Opposition member nominated in writing to the Clerk of the House by the Leader of the Opposition; and
 - (c) Mr Jones."

MEMBERSHIP OF THE COMMITTEE

The Joint Committee consists of five Members of the Legislative Assembly and four Members of the Legislative Council. These members are :

Legislative Assembly

Mr Anthony Stewart, MP (Chairman)
Mr James Anderson, MP
Ms Marie Andrews, MP
Mr Wayne Merton, MP
The Hon Gerald Peacocke, MP

Legislative Council

The Hon Jan Burnswoods, MLC
The Hon Michael Gallacher, MLC
The Hon Richard Jones, MLC
The Hon Bryan Vaughan, MLC

Consultant to the Committee

Mr Keith Ferguson

Secretariat

Ms Catherine Watson, Director
Ms Meryl James, Research Officer
Ms Glendora Magno, Assistant Committee Officer

CHAIRMAN'S FOREWORD

In December last year I was asked to appear on the Channel Nine programme, *A Current Affair* in my capacity as Chairman of the Joint Select Committee on Victims Compensation. The story focussed on what I considered to be a gross injustice, the denial of victims compensation to a father and brother of a murder victim and the granting of the amount of \$3,000 to an accomplice to the murder.

As a result of my involvement in this television programme I became acquainted with Thomas and Carolyn Walsh and undertook to bring their matter to the attention of the Committee. The ultimate outcome of which has been this Report.

Although at the time I understood the concerns that the Walshs raised about the decisions made by the Victims Compensation Tribunal to award and refuse compensation, I was amazed to discover the problems which they had encountered with their solicitor, Ms Sharon Rakus. The Walshs, during in their experience as victims of crime, and a very horrible crime it was, involving the violent murder of their son, seem to have encountered some very unsympathetic and inequitable attitudes and decisions.

I am pleased to say that throughout the course of this inquiry the Committee has uncovered a great deal of the truth about the conduct of Ms Rakus towards her victims compensation clients and information as to why the Victims Compensation Tribunal made the decisions it did regarding the applications relating to Matthew Walsh's murder.

The evidence presented to the Committee on Rakus Solicitors has demonstrated that this firm, has purposefully set out to use the credibility of a respected volunteer organisation, the Sydney City Mission, as its recruitment base for unsuspecting and highly vulnerable clients.

In this regard Sharon Rakus has shown herself to be a solicitor who has used her privileged, trusted and respected position to manipulate and abuse the victims compensation system. One can only surmise that this systematic abuse of the victims support system by Sharon Rakus was done for her own financial gain - at the expense of many genuine victims of crime and at the expense of the

New South Wales taxpayers who largely fund the scheme. In particular, her treatment of the Walsh Family has been unconscionable.

I believe the key issues which the Committee has uncovered in this inquiry concerning abuses of victims compensation by a solicitor are systemic problems which need to be rectified by the introduction of more checks and balances on the quality of work being done, given that it is the taxpayers of New South Wales who are ultimately footing the bill.

I endorse all the recommendations of the report and trust that both the Legal Services Commissioner and the Attorney General will give these recommendations their prompt and considered attention. I wish to thank all the witnesses who appeared before the Committee during the course of this inquiry as well as the Committee Secretariat for their assistance in the preparation of the final report.

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

Tony Stewart MP
Chairman

SUMMARY OF RECOMMENDATIONS

- 1. That the Legal Services Commission examine whether Sharon Rakus placed herself in a position of professional conflict of interest in handling the victims compensation claims both the Walsh Family and David Koziwoda.**
- 2. That the Legal Services Commission examine whether Sharon Rakus's work in relation to victims compensation applicants generally, and the Walsh family's claims in particular, was below the acceptable professional standard for a member of her profession.**
- 3. That legal fees be met by the Tribunal on a discretionary basis, only, depending upon the complexity of the claim**
- 4. That the Legal Services Commission examine whether Sharon Rakus's involvement with the Victims of Crime Service at Sydney City Mission fell below the acceptable professional and ethical standard required for a member of the legal profession.**
- 5. That the Attorney General consider not recommending Magistrate Chris Longley for any further appointment to the Victims Compensation Tribunal on the basis of the Walsh decision.**

CHAPTER 1

Background

On 13 February 1998 the Committee received correspondence from a Mr Thomas and Mrs Carolyn Walsh (see Appendix 1).

The Walshs raised three complaints with the Committee concerning a solicitor named Ms Sharon Rakus:

- That Sharon Rakus had passed herself off as an employee of Sydney City Mission who was handling their application on a *pro bono* (voluntary) basis;
- That Sharon Rakus provided them with bad initial advice regarding their claim which resulted in some of their family members being denied compensation and was thereafter unprofessional and unhelpful throughout the course of the matter;
- That Sharon Rakus also acted for a person who was involved in the murder of their son and a competing interest for the global amount of compensation available to be awarded to their family.

The Walsh's son Matthew had been murdered by a flatmate, Craig Isaacs, at his home at Bellevue Hill in September 1994. At the time of the murder there were two other people present in the flat, one of which was a David Koziwoda. There were conflicting accounts as to David Koziwoda's level of involvement in the crime but, according to his own admission, he helped Craig Isaacs carry Matthew Walsh out of the flat and load him into his work van. While Isaacs drove to Darlinghurst and abandoned the van, Koziwoda returned to the flat and cleaned up the blood.

After the murder the Walshs began attending meetings of the Homicide Victims Support Group. At one of these meetings they were introduced to Sharon Rakus, who attended the meeting as a guest speaker, offering assistance to victims with their compensation claims. The Walshs later contacted Sharon Rakus at the Sydney City Mission number that she had given them and made an appointment to see her there. Subsequently, Mr and Mrs Walsh and their three remaining children all lodged victims compensation claims through Rakus Solicitors with the Tribunal under the 1987 legislation.

At that time Sharon Rakus was working as a volunteer solicitor at Sydney City Mission's Victims of Crime Service. The Victims of Crime Service receives annual funding from the New South Wales Attorney General's Department to

assist victims of crime. Ms Rakus worked at the Mission in this role from February 1995 until July 1997. During that time there was a very significant increase in the amount of victims compensation claims lodged at the Victims Compensation Tribunal by the firm of Rakus Solicitors. Also, because Sharon Rakus was volunteering three days a week at the Mission and seeing all her clients in the Mission offices, there appeared to be confusion amongst compensation applicants as to whether she was employed by Sydney City Mission or in private practice.

The Walshs were also generally dissatisfied with the standard of service they received from Rakus Solicitors while they were handling their claims. Throughout the process they found Sharon Rakus difficult to contact and unhelpful when they tried to follow up the progress of their applications. Ultimately they found that money was awarded to only three out of their five family members. At least one family member, the murdered man's father, appears to have been denied compensation due to the fact that he was wrongly advised by Sharon Rakus regarding the necessity of providing evidence of psychological injury with his application.

The Walshs subsequently also became aware that David Koziwoda had applied for, and received, \$3,000 in victims compensation on the basis of post traumatic stress resulting from the murder. They were understandably distressed about this, given the level of Koziwoda's involvement in the crime and the fact that the father and one brother of the murdered man were initially given nothing.

The Walshs also began to suspect that Sharon Rakus had simultaneously been acting for David Koziwoda. Under both the current and previous legislation, applicants in homicide cases all share from a global amount of \$50,000. The Walsh family saw David Koziwoda's claim as being a competing interest with theirs, in that any amount which he was awarded lessened the amount available to family members.

The Walshs came to the Joint Select Committee after appeals to the Director of Public Prosecutions to have David Koziwoda tried as an accessory to the murder and to the Attorney General to have the payment of his compensation refused, failed. On 23 December 1997, they appeared on *A Current Affair* protesting the unfairness of David Koziwoda's award.

The Committee considered the matter well within their jurisdiction given that Sharon Rakus's fees in all instances were met by the Victims Compensation Tribunal. The Committee is empowered under Section 1(b)(vi)(vii) of its terms of reference to inquire and report on the long term financial viability of the Victims Compensation Fund having regard to the availability of sources of funding other than the Consolidated Fund and any changes in the

administration of the Victims Compensation Fund which may restrain escalation costs.

It believed that if Sharon Rakus was behaving in an opportunistic and deceitful manner with regard to her work at the Victims of Crime Service, using it to acquire victims compensation clients and further, she was offering substandard service which was subsequently being paid out of the Victims Compensation Fund, these matters fell clearly within the Committee's ambit. The Committee also considered, based on the findings of this inquiry, that the whole issue of how solicitors' fees are currently funded may need to be rethought.

CHAPTER 2

The Conflict of Interest Issue

Background

The Walsh family came to suspect that Sharon Rakus was also acting for David Koziwoda due to a comment made by the clinical psychologist which Ms Rakus had referred the family to, a Mr Tom Jones. Mr Jones indicated to Paul Walsh, the brother of the murdered man, that he was seeing another client in relation to the case who had lived in the flat at the time of the murder. At the time the Walsh family thought this must have been the fourth flatmate who they were satisfied had not been involved in the murder. It was not until the compensation was awarded that they realised that this person was David Koziwoda.

The Director of Victims Services, Mr Phil O'Toole, confirmed that Rakus Solicitors had, in fact, acted for both the Walsh family and David Koziwoda. Ms Rakus, during her appearance before the Committee, said that she had obtained David Koziwoda as a client through her voluntary work at the Victims of Crime Service at Sydney City Mission. Two claims were submitted on behalf of David Koziwoda, one for post traumatic stress following the murder of Matthew Walsh and one for an alleged threat on Koziwoda's life due to the fact that he had agreed to act as a witness for the prosecution at the murder trial.

The Definition of Conflict of Interest

The *Professional Conduct and Practice Rules for Solicitors* clearly state that solicitors must deal with their client fairly and free of the influence of any interest which may conflict with the client's best interest.

Rule 9 sets out the following parameters in relation to acting for more than one party. Rule 9.2 states that a practitioner who intends to accept instructions from more than one party to any proceedings or transaction must be satisfied, before accepting a retainer to act, that each of the parties is aware that the practitioner is intending to act for the others and consents to the practitioner so acting in the knowledge that the practitioner may be, thereby, prevented from disclosing to each party all information, relevant to the proceedings or transaction, within the practitioner's knowledge, or giving

advice to one party which is contrary to the interests of another. Paragraph Three of the ruling makes it clear that once a conflict arises the solicitor must cease to act for both parties.

As the Legal Services Commissioner outlined to the Committee there may be a perception of a conflict of interest without there being an actual conflict. An actual conflict of interest will occur only when a practitioner acts for more than one party and the interests of those parties comes into conflict and the practitioner then acts in such a way to favour one party's interests over the other.

The Walsh Family's View

In the eyes of the Walsh family Sharon Rakus had clearly put herself in a conflict of interest situation in acting for both themselves and David Koziwoda. While it is common practice for solicitors to act for several or all members of one family in victims compensation matters, this is generally with the full knowledge and acquiescence of the applicants. The Walsh family were opposed to David Koziwoda's application on the basis of his involvement with the murder. Further, any monies he received potentially lessened the amounts available to the Walsh family members.

Chairman: *You mentioned that David Koziwoda was given \$3,000 compensation. Did that potentially mean that your family received less?*

Mr Walsh: *Yes....because only a certain amount is allocated....and the allocation is \$50,000 so if each of us around this table claimed, and I am the main victim, my lot becomes less.*

Chairman: *Would you have stayed with Rakus Solicitors if you had known that they were also acting on behalf of David Koziwoda?*

Mr Walsh: *No, I certainly would not. If I had employed and paid Sharon Rakus out of my own pocket, to be quite honest, I would actually be looking at taking her to the Law Society.*

Mr. Walsh, Transcript of Evidence, 27 April 1998

Mr and Mrs Walsh went on to say that they believe that Sharon Rakus must have withheld key facts from the Tribunal when submitting David Koziwoda's claim as she had a fuller knowledge of his involvement as a result of her conversations with them. They believe that she withheld this crucial knowledge regarding the extent of his involvement in order to promote his claim for compensation at the expense of their family. Mr Walsh told the Committee:

We had a strong suspicion that she (Sharon Rakus) had acted on behalf of Koziwoda and if she put down the facts before the Tribunal, surely the magistrate would have to put a question mark on whether this man is entitled to compensation from the point of view that he was involved in it. Obviously our feeling is now that she did not put down the full facts when she acted on his behalf. She then says that she did not know about them, but she did know about them from the only meeting we had that night when we filled out the appropriate papers.

Mr. Walsh, Transcript of Evidence, 27 April 1998

Rakus Solicitors' View

Ms. Rakus was firmly of the view that there was no conflict in her acting for both the Walsh family and David Koziwoda. She told the Committee that at the time she undertook to act on behalf of Mr. Koziwoda she was aware that she was also acting for the Walshs:

Yes I was (aware). We have done many murder applications and we have dealt with more than one of the family or other members in regard to a murder application. As Mr O'Toole said, often in a murder case the matter gets dealt with more quickly when one solicitor deals with all the matters. There was no conflict. There were no charges against David Koziwoda. If there had been charges, of course we would not have acted because there would have been a conflict of interest. At the time there were no charges laid against Mr Koziwoda. He presented to me as a genuine victim.

Ms. Rakus, Transcript of Evidence, 27 April 1998

Ms Rakus insisted that she honestly believed that David Koziwoda was a genuine victim despite the fact that the Walshs had told her about his involvement at their first and only interview with her. Mr Walsh told the Committee:

We made an appointment with this solicitor (Sharon Rakus). One night at 6.30 I went along with my youngest son, my daughter and my wife. We poured out her hearts to this solicitor, telling her exactly what happened in the flat that night and how there was another person involved who took our son's body down and threw it in a van while the other chap took it and dumped it at the Cross, and he went back upstairs and cleaned up the unit. We stated this to the solicitor on that night.

Mr. Walsh, Transcript of Evidence, 27 April 1998

Ms. Rakus also failed to send to the Victims Compensation Tribunal for the police report. This is common and sensible practice by most solicitors when preparing victims compensation claims. It enables them to find out salient facts which will assist their clients to put in the most effective claims. Had Ms Rakus sent for a copy of the police report she would have found that

Detective Senior Constable R.A. Mills had recommended that Mr. Koziwoda's two claims for compensation not be paid (see Appendix 2):

In closing, after an extensive inquiry investigating police are firmly of the opinion that there never was any 'plot' to kill Koziwoda and that Walker had fabricated the entire story for his own gain. In the entire time I dealt with Koziwoda from the time of the murder until Isaacs' trial concluded in June 1996 he has never indicated to me or to any other involved police officer that he in anyway feared for his safety nor did he ever express any concerns about the matter.

It should also be noted that a submission is presently with the Office of the Director of Public Prosecutions regarding Koziwoda's involvement in the death of Matthew Walsh and whether he should be prosecuted over his involvement.

Report of Det. Sen. Constable R.A. Mills, 6 February 1998

The Victim Compensation Tribunal's View

Mr Phil O'Toole, the Director of the Tribunal, indicated strongly to the Committee that he believed that Rakus Solicitors had placed themselves in a position of conflict. When asked whether he considered whether there was an obvious conflict of interest Mr O'Toole replied:

I consider that there is, acting on behalf of the Walsh family and the Koziwoda applicant, because the application ended up having an impact on the amount of money which was available to be dispensed between the Walsh family. There were also concerns that two of the applications were initially dismissed because of the lack of evidence which was attached to those applications, this situation was only remedied after the matter was brought to the attention of the Chairperson and the then Registrar.

Mr. P. O'Toole, Transcript of Evidence, 27 April 1998

By giving Mr. Koziwoda correct advice regarding the need to obtain a psychological report and Mr Tom Walsh incorrect advice, Ms Rakus created a situation whereby Mr Walsh was denied compensation and Mr Koziwoda was not.

The Legal Services Commissioner's View

The Legal Services Commissioner, during his appearance before the Committee, indicated that he felt that this case may contain all the elements for an actual conflict of interest to be present:

You present me with a proposition that Mrs Rakus appeared to be acting for a number of claimants who are all within the family of the deceased and one individual

who happened to be a flatmate of the deceased and about whom there are allegations that he had some sort of role to play not in the perpetration of the crime but subsequently. The issue would be at the first level: is there a perception of conflict of interest? In my view, readily; yes, there is. Is there an actual conflict? I cannot say. I would have to investigate the matter. By investigating the matter I would have to know whether the practitioner at some point was either aware or, if not aware, had a reckless disregard to the facts in the matter, of which she should have been aware, that there was a genuine conflict of the interest of her clients and her actions favoured one interest over another.

Mr. Mark, Transcript of Evidence, 13 May 1998

Conclusion

The Committee has grave concerns about Ms. Rakus's ethical and professional behaviour in this matter. Having accepted the Walsh family as clients, and having been told the details of the case and left under no misapprehension as to their feelings regarding Mr. Koziwoda, Ms. Rakus knowingly took him on as a client. Further, if she had called for a copy of the police report on the incident as all prudent solicitors do, she would have discovered that he had not been recommended for compensation due to the fact that consideration was being given by the Director of Public Prosecutions to charging him as an accessory after the fact in line with police recommendations.

In applying for victims compensation for Mr. Koziwoda, Ms. Rakus withheld key facts from the Tribunal which she knew from the Walshs about his involvement in the concealment of the murder in order to best secure his chances of being granted compensation. Further this compensation was granted from the pool of money which could have been distributed to the Walsh family as the direct relatives.

Recommendation

- 1. That the Legal Services Commission examine whether Sharon Rakus placed herself in a position of professional conflict of interest in handling the victims compensation claims of both the Walsh Family and David Koziwoda.**

CHAPTER 3

Rakus Solicitors Representation of Victims Compensation Clients

Background

Rule 1 of the *Revised Professional Conduct and Practice* rules requires solicitors to:

act honestly, fairly, and with competence and diligence in the service of a client, and should accept instructions, and a retainer to act for a client only when the practitioner can reasonably expect to serve the client in that manner and attend to the work required with reasonable promptness.

At common law a solicitor owes a duty of care to his/her client in both contract and tort. In relation to contractual duty of care the standard required is what *the reasonably competent practitioner would do having regard to the standards normally adopted by the profession.*

Throughout their evidence to the Committee the Walshs stressed how unhappy they were with the way Sharon Rakus represented them. This was a view which was backed up by the Tribunal in relation to the general standard of the applications received by them from Rakus Solicitors on behalf of other clients.

In the words of Mr Walsh:

If I had known that there were going to be so many hassles and problems with Ms Rakus, I would never have gone to her. To be quite honest, I am sorry now that I never took my own solicitor's advice and got him to do it. It was a shambles on her part from the start. I think she was very non-professional in her whole approach...It was a never ending saga of excuses from her.

Mr. Walsh, Transcript of Evidence, 27 April 1998

The Walshs emphasised to the Committee how very emotionally vulnerable they were following the murder of their son. They were extremely dependent on their solicitor to effectively and expeditiously deal with their claims. During this time they were not only coming to terms with the loss of their son but living through the two year period leading up to the murder trial and the two subsequent appeals.

They explained how incredibly stressful it was that some members of the family were awarded compensation and some were not. This was exacerbated by the fact that David Koziwoda received compensation. Mrs Walsh told the Committee:

The trauma of the final bit, especially when compensation was not awarded to him (Mr. Walsh) and our son, really distressed me because I knew I was going to have to tell (my husband) when he got back from overseas. Perhaps I could understand a mistake being made about one of the siblings but I could not understand a mistake being made about the father.

Mr. Walsh, Transcript of Evidence, 27 April 1998

Advice Concerning the Establishment of Psychological Injury

As the Walsh family applied under the previous 1987 legislation, there was a requirement that evidence of psychological injury be presented to the Tribunal. The Tribunal had issued practice notes to solicitors pursuant to the 1987 legislation regarding these requirements. These guidelines had been in force since the Tribunal's existence. Under Part 5(1)(iii) *Claims for Psychological Injury - Close Relatives* it is clearly stated, that while close relatives need not be referred to psychiatrists purely for the purposes of their applications their claim will be assessed on the basis of the grief they suffer. Therefore the level of this grief must be outlined in the application. This is particularly important as the Tribunal must apportion amounts between the close relatives.

Obviously, the best and arguably easiest way to establish grief is through a psychological report. If this course is not followed then some amount of detail must be included in the application form. Despite this, Sharon Rakus told Mr. and Mrs. Walsh that there was no need for them to demonstrate evidence of any grief and the application she submitted on behalf of Mr Tom Walsh included no reference to the matter except a medical certificate relating to a pre-existing medical condition:

To the best of my knowledge we were advised that as parents of Matthew, of our dead son, basically we did not need medical reports; that the parents were sort of apart, they were separate to the siblings, for want of a better word.....because I had a severe breakdown and had spent some time in hospital I thought it was very valid and that it would be stupid not to put in a report about my condition and what had happened to me. My husband had a lot of stomach upsets early in the piece, which required his consulting with a general practitioner. He had seen a specialist and he had an endoscopy because he had all of these problems. So we thought it was valid to

present a report from his GP as well.....but at the meeting that night we came away very pleased with what Sharon Rakus was saying, that there were no reports required for us in any way shape or form.

Mr. Walsh, Transcript of Evidence, 27 April 1998

The evidence that Ms Rakus gave to the Committee also indicated that she was under this misapprehension regarding the 1987 requirements. She told the Committee in relation to David Koziwoda's claim:

I believed at the time he was a friend and he was emotionally traumatised as a direct result of his friend being murdered and that is why we would have gotten him a psychiatric report. As he was not a family member under the Act we had to get him a psychiatric report.

Ms. Rakus, Transcript of Evidence, 27 April 1998

It seems incredible that Sharon Rakus, a solicitor who at that time had more applications before the Tribunal than any other firm, could be so seriously ignorant of the basic requirements of the Tribunal regarding an application in relation to a homicide victim. Ms Rakus told the Committee that she considered Rakus Solicitors to be a specialist in this field. However, her erroneous advice to Mr and Mrs Walsh regarding the need for them to produce some evidence relating to psychological injury directly resulted in Mr Walsh being initially denied compensation.

The Standard of Rakus Solicitors' Applications Generally

The Victims Compensation Tribunal submitted to the Committee that they considered the general standard of applications received from Rakus Solicitors to be poor. When asked by the Committee why so many more of Rakus Solicitors cases were dismissed by the Tribunal than those of other firms, Mr Phil O'Toole, the Director of the Tribunal gave the following response:

Mr O'Toole: *Because of the standard of the applications, sometimes all information is not provided and sometimes all medicals are not provided at the time of the determination.*

Committee Member: *Is it basically sloppy work?*

Mr O'Toole: *It could be described as that, yes.*

Mr. P. O'Toole, Transcript of Evidence, 27 April 1998

The Tribunal also provided the Committee with figures regarding the Ministerials they have been requested to write in response to complaints sent to the Attorney General by Members of Parliament on behalf of their constituents.

During 1997, 30 per cent of all complaints sent to the Attorney General by Members of Parliament regarding constituent's dissatisfaction with the way solicitors were handling their victims compensation claims were clients of Rakus Solicitors. In total 27 victims compensation applicants approached their local Member last year to complain about Rakus Solicitors.

Conclusion

The Committee has strong concerns about the standard of service being given to victims compensation claimants by Rakus Solicitors. Given that Rakus Solicitors are receiving full remuneration for their work from the Victims Compensation Tribunal, this is not only a concern for their clients but ultimately for the taxpayers of New South Wales who are not receiving value for the money being spent from the Consolidated Fund towards assisting victims of crime. During both 1995 and 1996 Rakus Solicitors made \$250,000 a year from their work in this area alone.

In 1997/98 the Tribunal will pay out approximately \$5.4m in fees to solicitors preparing victims compensation claims. It is clear that there is no real quality control over this work. As was indicated by Mr Walsh, because claimants are not paying the fees themselves, they are often loathe to complain about the standard of service they receive.

While the Committee does not wish the substandard work done by Rakus Solicitors to in any way reflect upon the standard of work done by other practitioners in the field of victims compensation, it believes that there must be sufficient checks and balances in place to ensure that the area is not open to exploitation. Currently solicitors are paid automatically by the Tribunal for successful claims regardless of the standard of work they do. The Rakus example has indicated that this may not be in the best interests of either victims of crime or the long term financial viability of the Fund. The Committee therefore believes that, in line with Recommendation One in its *Second Interim Report* legal fees should only be met by the Tribunal on a discretionary basis depending on the complexity of the claim.

Recommendations

- 2. That the Legal Services Commission examine whether Sharon Rakus's work in relation to victims compensation applicants generally, and the Walsh family's claims in particular, was below the acceptable professional standard for a member of her profession.**
- 3. That legal fees only be met by the Tribunal on a discretionary basis depending upon the complexity of the claim.**

CHAPTER 4

Sharon Rakus's Work at Sydney City Mission

Background

Sharon Rakus worked as a volunteer solicitor at Sydney City Mission's Victims of Crime Service from February 1995 until July 1997. During that time there was a very significant increase in the amount of victims compensation claims lodged at the Victims Compensation Tribunal by the firm of Rakus Solicitors. Also, because Sharon Rakus was volunteering three days a week at the Mission and seeing all her clients at the Mission offices, there appeared to be confusion among compensation applicants as to whether she worked for Sydney City Mission or was in private practice.

During the time that she worked there compensation claims lodged by her firm increased from only one in 1994 up to 418 in 1995. Ms Rakus admitted to the Committee that this increase was due solely to her work at the Mission. During the years 1995 and 1996 her firm was paid almost \$500,000 by the Victims Compensation Tribunal in fees.

The Committee found it difficult to understand why it was necessary to provide legal assistance at all at the Victims of Crime Service given that any victim could attend a solicitor free of charge to themselves as the Tribunal would pay the fees. Ms Rakus quite freely told the Committee that one of her jobs at Sydney City Mission was to assist victims with their compensation claims and yet these claims were being submitted in the name of Rakus Solicitors and the fees being collected accordingly.

The Complaint to the Legal Services Commissioner

On 7 August 1995 Mr Phil O'Toole, Director of the Victims Compensation Tribunal, wrote to the Legal Services Commissioner complaining about various aspects of Ms Rakus's involvement with Sydney City Mission.

The principal complaint was that Ms. Rakus was located within the premises of Sydney City Mission primarily to provide free legal advice and assistance to victims of crime but instead seemed to be using her position at the Mission to prepare these victims' applications in the name of Rakus Solicitors and thus collect the \$600 per claim fee paid by the Tribunal. After noticing the dramatic increase in applications from Rakus Solicitors as well as receiving numerous complaints from victims about the standard of the work done by Rakus Solicitors, Mr O'Toole raised with the Commission what he considered to be

her “*unethical and unprofessional*” behaviour.

At the outset, Mr. Steven Mark, the Legal Services Commissioner considered that there were grounds for concern. In a letter to Mr O’Toole dated 8 September 1995, Mr. Mark said that he considered the advertising undertaken by Rakus Solicitors about their work at the Mission to be “*misleading, deceptive and that it is not honest*”. The Commissioner suggested that the matter be referred to the Ethics Officer at the Law Society of New South Wales for consideration.

The Ethics Committee of the Law Society had concerns on a number of grounds (see Appendix 3).

- Firstly, it was not satisfied that Ms Rakus provided adequate identification as to her firm’s connection with the Victims of Crime Service. Four conditions were provided regarding information that the firm should include in their documents.
- Secondly, the Ethics Committee had concerns about the phrases by the private law firm of Rakus Solicitors which stated: *proudly supported by Rakus Solicitors and Attorneys* and *The Victims of Crime pro bono legal service is proudly provided Rakus Solicitors and Attorneys* on Victims of Crime Service documentation.
- Thirdly, it told the Victims Compensation Tribunal in a letter of 31 January 1996 that *a situation had developed where you (the Tribunal) could have been seen to have been channelling work in this victims’ compensation area to one private firm and that potential clients, or at least persons seeking some informal advice about their position, could be misled.*

The conditions agreed to between the Law Society, Sydney City Mission and Ms Rakus were as follows:

- (a) *That the Victims of Crime Service flyers and brochures carry with them a notation along the lines of “A solicitor provided by Rakus Solicitors and Attorneys attends the service at (times) and is available to provide legal services in relation to Victims Compensation applications free of charge to you”;*
- (b) *That Ms Rakus draft a letter to be approved by the Ethics Committee to be handed to all persons interviewed by her and which sets out the*

basis upon which Rakus Solicitors would act for that person in Victims Compensation Tribunal applications;

- (c) *That all publications referring to the legal services provided by the Service make clear that those services are provided by Rakus Solicitors.*

The correspondence of 31 January 1996 from the Law Society to the Victims Compensation Tribunal repeatedly uses the term *pro bono* to refer to Ms. Rakus' work at the Mission. This is a legal term which refers to a solicitor assisting a client by providing a legal service either free of charge or at a significantly reduced fee. It can be argued that the view that Sharon Rakus was acting in a *pro bono* capacity was not accurate due to the fact that for each application she submitted on behalf of a client of the Victims of Crime Service she received a \$600 fee from the Victims Compensation Tribunal. Merely because the government paid for the work and not the clients does not necessarily make the work *pro bono*.

Mr Steve Mark the Legal Services Commissioner agreed with the latter view when he appeared before the Committee:

My view on this point might depart to some extent from that given by the Law Society. My view is very similar to yours: pro bono is work done for no fee. The community perception is that lawyers provide a service to the community. When they provide such a service to the community at no fee, the actuality should follow the terminology.....If we are talking speculative, in my view it cannot be pro bono. Speculative work is speculative work.

Mr. Mark, , Transcript of Evidence, 13 May 1998

The Confusion Over Sharon Rakus's Position at the Victims of Crime Service

Ms Rakus also told the Committee that victims were uncertain about her actual position vis a vis the Victims of Crime Service because they were often "traumatised" and "confused". However, the Committee found it easy to understand how their misapprehension occurred.

The Walshs made it clear that because they were instructed to attend their compensation application interview with Ms. Rakus at Sydney City Mission and at all times after that to contact her at the Mission on Monday, Wednesday and Friday mornings, they had no reason to think anything other than that she was employed by Sydney City Mission.

During her appearance before the Committee Ms. Rakus herself seemed to find difficulty drawing the line as to when she was volunteering at the Mission and when she was acting in a private professional capacity. She readily admitted that she instructed clients to contact her at the Mission and at other times she was "off duty" looking after her daughters.

Chairman: *Were you using the Victims of Crime Service at the Sydney City Mission as a base to see private clients? During previous evidence Mr and Mrs Walsh raised a concern that the only face-to-face access they had to you, other than subsequent phone calls, was through the Sydney City Mission.*

Ms Rakus: *I was spending a lot of my time at Sydney City Mission. I started off with one day a week and I built it up. I also had young children, so at one stage I was working part time. When I was not at the Victims of Crime Service I was spending time with my young children.*

Ms. Rakus, Transcript of Evidence, 27 April 1998

Ms. Maureen Patrick, Manager of the Victims Support Service agreed with the Committee that there appeared to be confusion as to whether Ms Rakus was employed by the Mission and this may have partially been the fault of Ms Rakus:

Committee Member: *It almost seems obvious that Sharon was not making it clear to people who came to Sydney City Mission that she was also representing her own firm. Would you say that this was a fair comment?"*

Ms. Patrick: *That is a fair comment, I would think. You must also consider the fact that if people are traumatised they do not really take in details. Probably the fact that Sharon Rakus was at the Mission and could be contacted there on certain days indicated to them that she was actually working for us."*

Ms. Patrick,, Transcript of Evidence, 13 May 1998

Although Ms Patrick had initially stated to the Law Society that she had observed Ms Rakus disclosing to victims that she was not an employee of the Mission, and was satisfied that she never represented herself as anything but a member of the firm of Rakus Solicitors, she acknowledged to the

Committee that she subsequently changed that view after discussions with the Registrar of the Tribunal and feedback from clients of the Victims of Crime Service:

Committee Member: *The letter (to the Law Society) states, 'Ms Maureen Patrick, Director of the Victims of Crime Service, has stated to me on a number of occasions that she has observed Ms Rakus to disclose to all persons whom she has seen interviewed that she is a volunteer solicitor from Rakus Solicitors and that Rakus is the body that performs the legal work involved in acting for a client'. A bit further down you will note that it states, 'Ms Patrick and Ms Rakus deny that Ms Rakus represents herself as anything other than a member of the firm of Rakus Solicitors.' That was your opinion then, was it?*

Ms. Patrick: *Yes, from what I observed if I walked in the room and she was on the phone.*

Committee Member: *Even if she knew you were coming?*

Ms. Patrick: *She would know that I was coming because of the seating in the room. That is what I honestly believed at the time.*

Committee Member: *And you have changed your mind subsequently.*

Ms. Patrick: *Only because of circumstances which I have already outlined to you. I became concerned and that was what prompted her dismissal, if that word can be used, because she was not working for us in June 1997.*

Ms. Patrick, Transcript of Evidence, 13 May 1998

Even after the agreement between the Victims of Crime Service, Ms Rakus and the Law Society, it seemed questionable as to whether the confusion over in which capacity Ms Rakus was in fact working at the Victims of Crime Service had been rectified:

Ms Rakus: *When people came to see me I gave them the disclosure form. I would explain their legal rights and I would let them know that they could either fill out an application form and go home and think about it, or go see another solicitor. They were not bound to fill out an application form.*

Chairman: *Did the disclosure form require an applicant's signature?*

Ms Rakus: *Yes, it did*

Chairman: *And to whom would that form be handed?*

Ms Rakus: *We (Rakus Solicitors) had it on file.*

Ms. Rakus, Transcript of Evidence, 27 April 1998

Maureen Patrick told the Committee that the Victims of Crime Service never sighted any of the forms:

On the way back from the Tribunal I said to Sharon, 'Sharon, you must make sure that you inform everyone that you are a private solicitor. You must give your other phone number to clear things up.' At that point I got a different form together, I sent a copy to Mr Ferguson (Tribunal Registrar). He looked it over and thought that it would be okay; that it would clarify that she was actually a private solicitor. I gave her these forms and my recollection is that I might have said to her, 'Give these to your clients. Make sure they sign them and either give them back to me or keep them on the file.' I never got any back. I assumed or I understood at the time that she was actually handing those to each client, getting them to sign them and then I understood that she was keeping them in the files.....Not the Mission's files....we did not keep files of hers because they are confidential between solicitor and client. We had no files of Sharon's

Ms. Patrick, Transcript of Evidence, 13 May 1998

As, despite promises to the contrary, Ms Rakus never produced any of these forms signed by victims compensation applicants she saw at the Victims of Crime Service, the Committee is unable to draw any conclusion as to whether the requirements of the Law Society were ever complied with. Certainly, the confusion regarding Ms Rakus's role at the Mission appeared to continue up until she ceased work with the Mission in July 1997.

Conclusion

The Committee has serious concerns regarding Ms Rakus's involvement at the Victims of Crime Service. By her own admission, she passed herself off as a volunteer for her own significant financial gain. Whether or not she actively encouraged victims of crime to believe that she was an employee of the Mission, she used the Mission's premises in order to conduct her

solicitor's business for a period of two and a half years. By doing this, she was ensured a constant stream of clientele. The financial reward is still incalculable because all 1987 applications have not been finalised but it would seem that her firm would at least have gained close to \$600,000 from the exercise.

The Committee considers that to exploit not only a charity organisation such as Sydney City Mission in such an opportunistic way, but also victims of crime generally, is not only unethical but unconscionable.

Recommendation

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| <p>4. That the Legal Services Commission examine whether Sharon Rakus's involvement with the Victims of Crime Service at Sydney City Mission fell below the acceptable professional and ethical standard required for a member of the legal profession.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

CHAPTER 5

The Decision to Award Victims Compensation

Background

The decision to award victims compensation was made by an Acting Magistrate at the Victims Compensation Tribunal, a Mr Chris Longley. Mr Longley considered all six applications in relation to Matthew Walsh's murder together. He decided on the basis of the information before him to award the following amounts: Carolyn Walsh \$15,150; Paul Walsh \$10,300; Veronica Walsh \$5,300 and; David Koziwoda \$3,000. Tom Walsh and Stephen Walsh, the father and brother of the murder victim respectively, were denied any compensation despite the fact that \$16,250 still remained out of the \$50,000 allowable for applicants of a homicide.

The Victims Compensation Tribunal's Advice and Subsequent Actions

Mr Phil O'Toole, the Director of the Tribunal, told the Committee that in making his decision to pay compensation to Mr. Koziwoda, Acting Magistrate Longley had expressly acted against the Tribunal's recommendation. Both the previous 1987 Act (under which the application was put) and the current 1996 Act contain sections relating to contributory behaviour by the applicant. On the basis of such behaviour applications can be dismissed or awards reduced. It was considered that David Koziwoda's actions in assisting in the disposal of the body and other evidence of his involvement in the murder were sufficient ground to dismiss his claim:

The Acting Magistrate, Mr Chris Longley, who was there for only a brief period, was made aware by the case summary writer, a Tribunal employee, that included in the police report- a record of interview of the police with Mr Koziwoda-that Mr Koziwoda was involved in the removal of the body from the flat and its loading into a van. This was highlighted by the case summary officer and referred to in a case summary document prepared by the case summary writer. Mr Longley even included comment to that effect in his determination. He stated : 'The applicant witnessed the murder of a flatmate and assisted with the removal of the body from the premises'. I can only state that the Magistrate acted against the recommendation of the Tribunal. We considered it to be an error by the Acting Magistrate. Once we became aware of it we sought Crown Advocate's advice as to whether we could overrule it.

Mr. P. O'Toole, Transcript of Evidence, 27 April 1998

Legally there was no basis for the Tribunal to overrule Magistrate Longley's decision under the 1987 legislation. The only redress against Magistrate's decisions under this Act was for the applicant involved to appeal to the District Court against the Tribunal's determination. As neither the Walsh family nor the Tribunal were the applicant in this instance there was little recourse for either of them. Mr O'Toole outlined to the Committee the steps the Tribunal had taken to attempt to reverse Magistrate Longley's decision:

Firstly, we stopped payment on it. Once the Registrar was made aware that the matter had taken place. When it came back from the Acting Magistrate's office to the Team Manager in charge of the Tribunal compensation process she thought that a mistake had been made. The then Registrar immediately stopped the payment so the \$3,000 would not be released and sent the summary down to the Crown Advocate. We sought advice on two factors: one, could we appeal against our own Magistrate internally? The answer was no to that. Secondly, we sought advice as to whether or not we could take Supreme Court action on the basis that the Tribunal member had acted ultra vires. The subsequent advice we received from Megan Latham, the Crown Advocate, was that we could not do so and that she would be unsuccessful in a Supreme Court appeal.

Mr. P. O'Toole, Transcript of Evidence, 27 April 1998

It should be noted that this type of situation can no longer occur under the 1996 legislation. As Mr O'Toole explained to the Committee:

The difference between the 1987 and the 1996 Act is that under the current Act matters are determined in the first instance by assessors, not by magistrates. If I become aware of an apparent mistake or an error of law that the assessor has made I can refer the matter to the Tribunal Chairperson.

Mr. P. O'Toole, Transcript of Evidence, 27 April 1998

The Failure to Award Tom and Stephen Walsh Victims Compensation

It is difficult to understand why the decision had been made by Magistrate Longley to award some Walsh family members compensation and not others. The Walshs were obviously a close and caring family and there appeared to be no estrangement between Matthew Walsh (the murdered man) and any of the family applicants. Matthew's brother Stephen presented a psychological report along with his application similar to his brother and sister who were both awarded compensation by Acting Magistrate Longley. This was all that was required under the guidelines and legislation. Matthew's father, Tom, while wrongly advised by Sharon Rakus as to his need to show evidence of

psychological injury, would clearly be eligible to receive compensation as father of a murder victim. Magistrate Longley could either have exercised his powers of discretion in the matter and awarded compensation to Tom Walsh, or adjourned the matter until evidence as to psychological injury could be provided.

The reasons for the Acting Magistrate's decision to award compensation to whom and in what amounts in this matter appear unfathomable to the Committee and obviously caused the Walsh family a great deal of distress. While Tom and Stephen Walsh were eventually given the remaining \$16,250 by the Tribunal to share amongst themselves, this was a discretionary gesture and came sometime after the insult of being declined compensation at first instance.

Conclusion

The Committee believe that, based on his decision in the Walsh and Koziwoda matter, Magistrate Longley is clearly not an appropriate officer to be presiding over determinations for victims compensation. In the Committee's opinion his decisions to award David Koziwoda compensation and deny money to two members of the murder victim's immediate family was both inequitable and unsympathetic to the Walsh family and flew in the face of all the available evidence and the very intent of the legislation.

The decision as to who shall be rostered to act on the bench of the Tribunal is a joint decision between the Chief Magistrate of the New South Wales Bench of Magistrates and the Attorney General. As there are a significant number of cases still to be heard under the 1987 legislation, the Committee recommends that the Attorney General consider not recommending Magistrate Chris Longley for any further appointment to the Victims Compensation Tribunal on the basis of his decision in this case.

Recommendation

- 5. That the Attorney General consider recommending that Magistrate Chris Longley be unsuitable for any further temporary or permanent appointments to the Victims Compensation Tribunal bench on the basis of the Walsh decision.**

APPENDICES

Mr T Stewart MP
 Chairman
 The Joint Select Committee on Victims
 Compensation
 Parliament House
 Macquarie Street
 SYDNEY NSW 2000

RECEIVED
 18.2.98

13 February 1998.

Dear Mr Stewart

We are writing to you in your capacity as Chairman of the Joint Select Committee on Victims Compensation. On the 23 December 1997 you appeared on a segment on A Current Affair speaking about the misuse of victims compensation payments. We were also featured in that same segment outlining an injustice done to us through the Victims Compensation Tribunal. You are probably aware of some of the aspects of our case but we would like to let you know the details as we see them.

On September 28 1994, our son Matthew was murdered by his flatmate Craig Isaacs at the flat they shared at Bellevue Hill. As you can imagine we continue to struggle daily with the shock and trauma associated with such a crime as well as the overwhelming loss of our son. Also residing in the flat and present that evening were two other men, one of whom was David Koziwoda. After the crime was committed Koziwoda and the other gentleman ran from the flat heading towards Bondi Junction. Some 30 minutes later Koziwoda returned to the flat and assisted Isaacs to carry our son's body out of the flat, subsequently loading his body into the back of Matthew's work van. Isaacs then drove the body to St Peter's Lane in Darlinghurst and dumped it.

In the meantime Koziwoda went back into the flat and cleaned it up, washing floors, walls, restoring furniture etc.

At the Committal and subsequent trial he freely admitted to the actions we have outlined but to this day he has not and will not be charged as an accessory. We enclose a copy of our latest correspondence from the Director of the DPP, Mr. Nicholas Cowdrey.

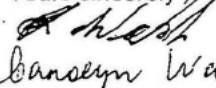
Bearing all these facts in mind and many more which are in the transcripts, you can imagine our shock when we learnt midway through 1997 that Koziwoda had lodged a claim with the VCT and been granted \$3000.00. We find this absolutely extraordinary as at the time of finding out about his compensation we learned with regard to our compensation that it had only been granted to three members of our family and withheld from two. Apparently this was due to some mistake by the Magistrate handling the claim. Fortunately for us this was corrected fairly quickly by the Tribunal through the efforts of Mr. Keith Ferguson and also with assistance from the Homicide Victims' Support Group but Mr. Koziwoda retained the \$3000.00.

We feel very angry with the Solicitor who handled our case, Ms Sharon Rakus. We have strong suspicions, but no definite evidence that she may have also acted for Koziwoda in his claim and feel this would have presented a definite conflict of interest. When questioned about the role Koziwoda played in our son's murder she did not appear to know any of the facts surrounding the case. One wonders also how much the Tribunal members know about the details of each case they are deliberating upon.

After learning about the compensation granted to Koziwoda, we wrote to the Premier and he passed our concerns on to the Attorney General, Mr. Geoff Shaw. We enclose a copy of his subsequent reply. After our appearance on A Current Affair, we understand that he was prepared to look at the claim again so we have written another letter continuing to put forward our concerns. We have had no reply at time of writing to you.

Thank you for taking the time to read about our case. Looking forward to meeting with you on the 23 February.

Yours sincerely


 Thomas and Carolyn Walsh

Thomas and Carolyn Walsh.

NSW POLICE SERVICE
MAJOR CRIME SQUAD SOUTH

**CHILD PROTECTION & INVESTIGATION TEAM**

Level 4
Prince Alfred Park Building
219-241 Cleveland Street
Strawberry Hills NSW 2012

Tel: 02 384 6744
E/N: 46744
Fax: 02 384 6732
E/N: 46732

6 February, 1997

THE REGISTRAR
VICTIMS COMPENSATION TRIBUNAL

ATTENTION : JUSTINE PROCTOR

RE: DAVID KOZIWODA - CLAIM FOR VICTIMS COMPENSATION

The following represents a synopsis of allegations that David Koziwoda was the subject of a "contract" in relation to his involvement in the murder of Matthew Raymond Walsh.

Following the death of Matthew Walsh on the 28 September 1994, Craig Isaacs was charged with murder and remanded in custody. While he was in custody he shared a cell with another prisoner, Graham Jack Walker, person who I would describe as a career criminal with numerous convictions for Fraud matters, Rape, Stealing and like offences.

In November 1994, Walker contacted Police stating that Isaacs had approached him with a view to having a "contract" taken out on David Koziwoda the principal witness for the Crown against Isaacs. Walker was interviewed by Police and on the 11 November 1994 wearing a judicially approved listening device he recorded conversations between himself and Isaacs. The conversations principally concerned Isaacs involvement in the murder of Matthew Walsh. Very little conversation related to the alleged plot against Koziwoda.

Contact was continued with Walker and he, in essence, claimed that the plot and the offer of money by Isaacs was still very much alive. Walker claimed that he was to face the Liverpool District Court in December 1994 for sentence on fraud matters. He stated that he had been given a sentence indication of a good behaviour bond. Upon his release he was to meet with Craig Isaacs father, Brian Isaacs and receive a sum of money and further instructions.

Walker would have been fitted with another judicially approved listening device to record the conversations. Walker was sentenced by His Honour Judge Neild to a term of imprisonment of 3 years. He did not win his freedom and the planned operation was aborted.

Contact continued on an almost daily basis between Walker and Detective Senior Constable Bruce Groenewegen his Case Officer. In early January 1995 Walker told the Detective that he had lost the "contract" on Koziwoda and that it had in effect been let to a Les Stibbs, a resident of Cairns. Extensive inquiries followed and STIBBS was interviewed at Glen Innes in January 1996. He denied being in any way involved in any plot to kill anyone calling Walker's allegations a fabrication.

In January 1995 David Koziwoda was interviewed in relation to the taped conversation of November 1994. Following this interview he was informed that there was a possibility that his life was in peril. Koziwoda laughed at the suggestion. He declined an offer of witness protection. A form of indemnity was obtained from Koziwoda (Copy attached).

Walker was released on parole in December 1995. He has since breached his parole by committing further fraud offences and is currently outside this jurisdiction.

In closing, after extensive inquiry investigating Police are firmly of the opinion that there was never any "plot" to kill Koziwoda and that Walker had fabricated the entire story for his own gain. In the entire time I dealt with Koziwoda from the time of the murder until Isaacs Trial concluded in June 1996 he has never indicated to me or any other involved Police Officer that he in any way feared for his safety nor did he ever express any concerns about the matter.

* [It should also be noted that a submission is presently with the Office of the Director of Public Prosecutions regarding Koziwodas involvement in the death of Matthew Walsh and whether he should be prosecuted over his involvement.]

I submit that Koziwoda is not entitled to any compensation regarding the death of Walsh or the alleged "contract" taken out on him.


R.A. Mills
Detective Senior Constable

PROFESSIONAL STANDARDS

The Law Society of New South Wales
ACN 000 000 600Our Ref: JAP 17967 9/95/22
Direct Line: 9926 0390

10 November 1995

PRIVATE & CONFIDENTIAL

Mr P O'Toole
Director
Victims' Compensation Tribunal
PO Box A4
SYDNEY SOUTH NSW 2000

Dear Mr O'Toole

Re: Sharon Rakus - Victims of Crime Service

I refer to your memo to the Legal Services Commissioner dated 7 August 1995 and to our telephone conversation on 30 October 1995.

As I understand it, your complaint against Ms Rakus is on the basis that she is

- (a) referring legal work, namely Victims' Compensation claims to her husband's firm in breach of Section 38J of the Legal Profession Act, 1987; and
- (b) receiving fees through that work in breach of the *pro bono* guidelines.

I enclose copies of correspondence from Rakus solicitors which address these matters.

Having made my own analysis of the matter, I propose to offer an opinion as to whether there has been any breach of the rules of ethics, and to suggest means by which any future confusion may be avoided.

The basis on which solicitors perform *pro bono* work is not that it is always performed on the basis that no fee is recouped by the solicitor. *Pro bono* work is work performed by the firm on a reduced fee basis or free of charge. As such, if Rakus solicitors were to perform work for applicants to the VCT, there would be no breach of the guidelines were Rakus to apply to the VCT for payment of costs and disbursements as part of the statutory award to the client. It would be another matter if Rakus were to seek to recover from the client additional costs and disbursements, but Mrs Rakus assures me that this is not the case. She stated in an interview with me on Friday 3 November 1995 that the firm only recovers the statutory costs, and as such it is true to say that the legal service is provided free of charge to the client. I do not pretend to be in a position to make a finding of fact, but if this is the case, then the firm is not in breach of the *pro bono* guidelines.

JAP-JAP-00002864/M-PS...3

Professional Standards Department
The Law Society of New South Wales
170 Phillip Street, Sydney NSW 2000
Phone (02) 220 0390
Fax (02) 221 5804
DX 362 Sydney

- 2 -

As for the performance of the work through Rakus solicitors, this would only be a problem if clients are unaware of the relationship between Rakus and the Sydney City Mission. Ms Maureen Patrick, the director of the Victims of Crime Service, has stated to me on a number of occasions that she has observed Ms Rakus to disclose to all persons whom she has seen interviewed that she is a volunteer solicitor from Rakus solicitors, and that Rakus is the body that performs the legal work involved in acting for a client. It is certainly normal practice for *pro bono* solicitors to perform the work under the firm's name, the only difference between this and the solicitor's "normal" work being the basis upon which fees are charged. Indeed, a solicitor cannot really work on any other basis due to the requirement that the work be performed by a person holding an unrestricted practicing certificate and having adequate insurance cover. There is therefore no ethical problem in the filing of documents under the name of Rakus solicitors, again, as long as the client is aware of the fact that a private firm is offering the service on the basis of reduced costs or free to the client.

As to the question of whether Section 38J has been breached, this depends on the information given to the client at the time. Ms Rakus has stated that she does not cross-refer other types of work to her husband's firm and is prepared to give the Law Society an undertaking to the effect that no referrals will be made on this basis, although I should point out that she would not be in breach of *pro bono* principles were she to do so.

Ms Maureen Patrick has confirmed that she has received no complaints from any clients of the service in relation to Ms Rakus, and that she is satisfied that Ms Rakus does adequately identify herself as a private solicitor. Both Ms Patrick and Ms Rakus deny that Ms Rakus represents herself as anything other than a member of the firm of Rakus solicitors. As I have stated, I am not in a position to make any findings of fact as alleged by you or Ms Patrick or Ms Rakus. It appears to me that the main area requiring clarification is the adequate identification by Ms Rakus of the nature of her firm's connection with the Victims of Crime Service. I would therefore make the following suggestions to clarify these matters:

- (a) That the Victims of Crime Service flyers and brochures carry with them a notation along the lines of "A solicitor provided by Rakus, Solicitors and Attorneys, attends the Service at [times] and is available to provide legal services in relation to Victims' Compensation applications free of charge to you."
- (b) That Ms Rakus draft a letter to be approved by the Ethics Committee to be handed to all persons interviewed by her and which sets out the basis upon which Rakus solicitors would act for that person in VCT applications;
- (c) That all publications referring to the legal services provided by the Service make clear that those services are provided by Rakus solicitors;
- (d) That, if required by you, Ms Rakus give an undertaking to the Law Society not to refer any work of any other nature to the firm of Rakus solicitors.

I believe that these suggestions would serve to make abundantly clear the connection between Rakus and the Victims of Crime Service. Please let me know if you would consider the matter resolved on that basis.

- 3 -

I look forward to hearing from you shortly.

Yours faithfully



JENNIFER PAKULA
Solicitor
Ethics Officer
Professional Standards

enc

cc Rakus, Solicitors & Attorneys
Legal Services Commissioner
Glenn Thiele, Pro Bono Officer, Law Society of NSW
Maureen Patrick, Director, Victims of Crime Service

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Professional Standards Department
The Law Society of New South Wales
170 Phillip Street, Sydney NSW 2000
Phone (02) 220 0390
Fax (02) 221 5804
DX 362 Sydney