

## ***In the Matter of Andrew John Smith***

**Case No:** Court of Appeal - S1052 of 2000  
**Date of Hearing:** 28 March 2000 and 4 April 2000  
**Appearing before:** Judges McPherson JA  
Thomas JA and  
Atkinson J  
**Order:** Struck off

### **Charge**

The charge was brought against Mr Smith on the basis of his convictions for criminal offences involving misappropriation of funds as follows:

- (a) on 1 December 1998 he pleaded guilty in the District Court to a charge of dishonestly applying to his own use an amount of \$12,000.00 which was the property of another; and
- (b) on 14 October 1999, he pleaded guilty in the District Court to three charges of misappropriating amounts totalling \$156,000.00.

### **Judgment**

The Court found that the conduct was sufficiently serious to require removal of his name from the Roll in the interests and protection of the public and made him unfit to be held out to members of the public as an officer of the Court.

Mr Smith was not practising as a solicitor at the time the offences were committed. As the conduct was unrelated to legal practice, there was sufficient doubt as to the Solicitors' Complaints Tribunal's jurisdiction to deal with the matter to render it appropriate that the application be made to the Court of Appeal in its inherent jurisdiction over officers of the Court.

The Court of Appeal has clarified the situation by finding that there is concurrent jurisdiction in the Tribunal and in the Court of Appeal but in the ordinary case, proceeding before the Tribunal was preferable, particularly where there may be disputed facts to determine.