

In the Matter of Alan Paul Barrell

Case Number: SCT/105
Date of Hearing: 16 June 2003
Appearing Before: Mr G C Fox
(Presiding Member/Practitioner Member)
Mr P L Cooper (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Struck off

Charges

1. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, namely clients' trust moneys, has failed, during the period 2000-2002, to comply with his obligations as trustee with respect to the audit of his trust account.

Particulars

- (a) At all material times the practitioner was the trustee of trust bank accounts conducted at the X branches of W and N.
 - (b) The practitioner is obliged as trustee, in respect of each financial period ending 31 March, to cause his trust records to be audited and to:
 - (i) By 31 May, lodge an auditor's report for that financial period in accordance with s16(1) of the *Trust Accounts Act*; and
 - (ii) By 14 June, lodge an audit certificate for that financial period in accordance with s3 of the *Legal Practitioner's Regulation 1996*.
 - (c) In breach of his duty, the practitioner:
 - (i) For the financial period ending 31 March 2000, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, such report and certificate not being lodged until on or about 15 March 2002;
 - (ii) For the financial period ending 31 March 2001, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, or at all;
 - (iii) For the financial period ending 31 March 2002, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, or at all.
2. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, namely clients' moneys, did, during the period 31 July 2000 to 4 February 2002 fraudulently misappropriate trust monies up to the sum of \$10,870.61 as particularised hereunder, by paying the said trust moneys to himself, or by applying the same to his own use and benefit, in circumstances where the practitioner had no lawful entitlement thereto.

Particulars

- (a) MC purchase from S
 - (i) On 31 July 2000, the practitioner transferred the sum of \$1,990.08, the property of his client MC, from his trust account to his service company trust ledger account, without authority or any other lawful entitlement thereto;
 - (ii) The said trust moneys were thereby mixed with the practitioners own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.
- (b) B purchase from DL
 - (i) On 31 March 2001, the practitioner transferred the sum of \$20.73, the property of his client, B, from his trust account to his service company trust ledger account for costs and outlays, without authority or any other lawful entitlement thereto;
 - (ii) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.
- (c) M purchase from P
 - (i) On 19 April 2001, the practitioner transferred the sum of \$110.00, the property of his client, M, from his trust account to his service company account for costs and outlays without authority, or any other lawful entitlement thereto;
 - (ii) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored;
 - (iii) Further, on 4 February 2002, the practitioner transferred the sum of \$6,036.00 the property of his client M, from his trust account to his service company trust ledger account, for costs and outlays in respect of an unrelated matter for the said client, without appropriate authority or any other lawful entitlement thereto;
 - (iv) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.

- (d) Mx purchase from D & Ors
- (i) On or about 12 June 2001, the practitioner received directly into his personal account from his client Mx trust moneys in the sum of \$1,760.00 on account of stamp duty, without any lawful entitlement thereto. The said sum represented trust moneys the property of the client Mx, or alternatively, moneys held on trust by the practitioner to the account of the Office of State Revenue ("OSR");
 - (ii) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.
- (e) J Lease to Bt & Co
- (i) On 31 October 2001, the practitioner transferred the sum of \$544.30 the property of his client J from his trust account to his service company trust ledger account for costs and outlays, without authority or any other lawful entitlement thereto;
 - (ii) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.
- (f) T
- (i) On 8 January 2002, the practitioner made a payment of trust funds to the OSR, being remittance of outstanding stamp duty in respect of in-house stamping undertaken by the practitioner. The said payment included trust moneys in the sum of \$1,000.00, received from his client T;
 - (ii) The OSR noted stamp duty of \$862.50 payable in respect of the dealing on behalf of the client T, resulting in a credit of \$137.50 repayable to T;
 - (iii) The said credit of \$137.50 the property of the client T was applied by the OSR in further satisfaction of the practitioner's own liability for unpaid stamp duty;
 - (iv) Notwithstanding such application, the practitioner has, since on or about 8 January 2002, continued to apply the said sum of \$137.50 to his own use and benefit, in that he has failed to account to his client T for the said sum, or to otherwise restore the said deficiency.
- (g) A purchase from Bn
- (i) On 18 January 2002, the practitioner transferred the sum of \$272.00, the property of his client A, from his trust account to his service company trust ledger account, without authority or any other lawful entitlement thereto;
 - (ii) The said trust moneys were thereby mixed with the practitioner's own moneys and applied to his own use and benefit. The said trust deficiency has not been restored.
3. Further, or in the alternative to charges 2(a), (b), (c), (e) and (g), that the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of the property, dealt with clients' trust moneys in breach of the terms of the trust and in breach of s8 of the *Trust Accounts Act* by, without authority, or any lawful entitlement, intermingling the property with his own property and thereby applied the same to his own use and benefit.

Particulars

- (a) In the alternative to charge 2(a),
- (i) On 31 July 2000, the practitioner withdrew the sum of \$1,990.08 the property of his client MC from the trust account to his service company trust ledger, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (ii) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
- (b) In the alternative to charge 2(b),
- (i) On 31 March 2001, the practitioner withdrew the sum of \$20.73 the property of his client B from the trust account to his service company trust ledger for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (ii) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
- (c) In the alternative to Charge 2(c),
- (i) On 19 April 2001, the practitioner withdrew the sum of \$110.00 the property of his client M from the trust account to his own service company account for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (ii) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored;
 - (iii) Further, on 4 February 2002, the practitioner withdrew the sum of \$6,036.00 the property of his client M from his trust account to his service company trust ledger for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without have any other lawful entitlement thereto;

- (iv) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
 - (d) In the alternative to Charge no. 2(e),
 - (i) On 31 October 2001, the practitioner withdrew the sum of \$544.30 the property of his client Jexville Pty Ltd from the trust account to his service company trust ledger for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (ii) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
 - (iii) On 8 January 2002, the practitioner withdrew the sum of \$141,801.68 from the trust account payable to the OSR in remittance of unpaid stamp duty including, inter alia, remittance of \$1,760.00 in respect of the matter Mx, purchase from D;
 - (iv) The payment was, as to the said sum of \$1,760.00, in breach of s8 of the *Trust Accounts Act*, as at the time of the said payment the practitioner held no trust moneys on behalf of his client Mx and the payment thereby represented a withdrawal of other clients' trust moneys for which the practitioner had no authority or any other lawful entitlement.
 - (e) In the alternative to charge 2(g),
 - (i) On 18 January 2002, the practitioner withdrew the sum of \$272.00 the property of his client A from the trust account to his service company trust ledger for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (ii) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
 - (iii) On 31 January 2002, the practitioner withdrew the sum of \$5,141.20 the property of his client C from the trust account to his service company trust ledger for costs and outlays, in breach of s8 of the *Trust Accounts Act* and without having any other lawful entitlement thereto;
 - (iv) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.
4. Further or in the alternative to charges 2(d), 2(f) and 7(b) that the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of the property, dealt with clients' trust moneys in breach of the terms of the trust, and in breach of s7 of the *Trust Accounts Act* by, without authority or any other lawful entitlement, permitting the intermingling of the property with his own property and thereby applied the same to his own use and benefit.

Particulars

- (a) In the alternative to charge 7(b),
 - (i) On or about 26 September 2000, the practitioner received in or about the sum of \$4,295.00 directly to his personal account from his clients D and others, which amount included trust moneys in the sum of \$3,564.49 on account of stamp duty;
 - (ii) The said sum of \$3,564.49 was received in breach of s7 of the *Trust Accounts Act* and without the practitioner having any lawful entitlement thereto.
- (b) In the alternative to charge 2(d),
 - (i) On or about 12 June 2001, the practitioner received the sum of \$2,454.00 directly to his personal account from his client Mx, which amount included trust moneys in the sum of \$1,760.00 on account of stamp duty;
 - (ii) The said sum of \$1,760.00 was received in breach of s7 of the *Trust Accounts Act* and without the practitioner having any lawful entitlement thereto.
- (c) In the alternative to charge 2(f),
 - (i) On or about 8 January 2002, the practitioner received the sum of \$1,000.00 from his client T, which sum comprised trust moneys of his client T, or alternatively, as to \$862.50 moneys held on trust by the practitioner to the account of the OSR, and as to the balance of \$137.50, moneys held on trust for the said client;
 - (ii) In breach of s7 of the *Trust Accounts Act*, the practitioner failed to pay the said trust moneys, or any part thereof, into his trust account.

5. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of the property, during the period from 22 February 2002 to 4 June 2002, dealt with clients' trust moneys in breach of the terms of the trust and in breach of s8(1) of the *Trust Accounts Act* and s10(1) of the *Trust Accounts Regulation 1999*, by wrongfully drawing against, or causing payments to be made from the trust account for the practitioner's service company, P, in circumstances where the amount of the withdrawal or the payment was more than the amount of cleared funds held in the account for P, in consequence whereof the trust ledger account for P was overdrawn between 22 February 2002 and 4 June 2002 in the amounts particularised in the schedule hereunder.

Particulars

- (a) The practitioner maintained a trust ledger account in the name of his service company, P. Payments were made from the said trust ledger for or on behalf of the practitioner, or at his direction;
- (b) During the period 22 February 2002 to 3 June 2002, payments were made from the trust account and debited to the P trust ledger at a time when the practitioner held no money in his trust account on behalf of P, in consequence whereof the trust ledger was overdrawn at the times and in the amounts appearing in the schedule hereunder;

Schedule

No.	Date	Trust Ledger Balance
1.	22/02/02	-\$13,125.98
2.	01/03/02	-\$13,141.98
3.	04/03/02	-\$13,152.38
4.	08/03/02	-\$15,765.38
5.	12/03/02	-\$26,773.23
6.	27/03/02	-\$28,743.23
7.	31/03/02	-\$28,113.23
8.	02/04/02	-\$23,154.21
9.	03/04/02	-\$19,664.81
10.	09/04/02	-\$18,430.31
11.	10/04/02	-\$26,290.61
12.	15/04/02	-\$22,290.61
13.	17/04/02	-\$20,731.61
14.	29/04/02	-\$22,731.61
15.	01/05/02	-\$22,737.31
16.	09/05/02	-\$21,012.31
17.	10/05/02	-\$20,262.31
18.	21/05/02	-\$21,262.31
19.	03/06/02	-\$21,268.11

- (c) In the premises, trust moneys ranging from the amount of \$13,125.98 to the amount of \$28,743.23 held by the practitioner on behalf of other clients were applied during the period 22 February 2002 to 3 June 2002 to the practitioner's own use or benefit, or at his direction;
- (d) The trust deficiency in the P trust ledger was restored on 4 June 2002 when the practitioner deposited the sum of \$30,000.00 to the credit of the trust ledger.
6. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, in breach of his duty as a trustee, and in breach of s6 of the *Trust Accounts Act*, failed, during the period 2000-2002 to keep such accounting or other records as to sufficiently explain the transactions and true position in regard to all dealings with trust moneys, and the disbursement or disposal thereof, in connection with the payment of stamp duty.

Particulars

- (a) During 2001 the practitioner transferred, from client trust ledger accounts to an OSR trust ledger account, moneys on account of stamp duty totalling \$141,801.68;
- (b) In or about January 2002, the OSR, through its Revenue staff undertook an audit of the practitioner's stamping records, the practitioner having lodged no returns with, and having made no remittance to, the OSR in 2001 in respect of in-house stamping;
- (c) Subsequent to the said audit, on 8 January 2002 the practitioner remitted to the OSR, in respect of the outstanding 2001 (whole of year) weekly returns:
- (i) A trust account cheque in the sum of \$141,801.68 drawn on the OSR trust ledger account;
 - (ii) A trust account cheque in the sum of \$3,991.62 drawn on the trust ledger account of P, the practitioner's service company; and
 - (iii) Client cheques for stamp duty totalling \$63,410.20.
 - (iv) The practitioner's trust remittance of 8 January 2002, as allocated by the OSR, did not correspond with all purchasers' transactions for which stamp duty funds had been received, as transferred to the OSR trust ledger account during 2001;
 - (v) The practitioner's trust remittance of 8 January 2002 in respect of 2001 stampings included trust funds pertaining to stamping which had been undertaken and paid in 2000;

- (vi) The OSR allocation of the remittance was pursuant to 2001 stampings returned, and included stampings for which funds had not been held in trust or otherwise remitted by the practitioner;
 - (vii) Upon allocation of the practitioner's remittance of 8 January 2002 the OSR advised that there remained a shortfall of duty payable of \$14,915.00 in respect of 2001 stampings.
- (d) Between 12 January 2002 and 10 April 2002, the practitioner remitted further trust funds of \$26,865.90 to the OSR, being in respect of the 2001 shortfall (\$14,915.00) and subsequent 2002 stampings. The said sum comprised \$22,639.15 from the P trust ledger and \$4,226.75 from the OSR trust ledger;
- (e) As at 10 April 2002, total remittances of trust funds by the practitioner to the OSR for 2001 stampings and year to date 2002 stampings was \$172,796.70, which sum comprised:
- (i) \$136,010.42 being client trust funds held in respect of the matters the subject of the OSR allocations
 - (ii) \$26,630.77 paid from the P trust ledger
 - (iii) \$10,018.01 being client trust funds relating to year 2000 stampings transferred to the OSR ledger in 2001
 - (iv) \$137.50 being a specific client stamp duty credit applied in payment of the 2001 allocations
- \$172,796.70**
- (f) The practitioner failed to keep such accounting and other records throughout the period 2000 to April 2002 as to sufficiently explain the transactions and true position in regard to the dealings with trust moneys and disbursement thereof, in connection with the allocation and payment of stamp duty.
7. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property did, on the various diverse occasions particularised hereunder, fraudulently misappropriate clients' trust moneys by applying the said moneys to his own use and benefit without authority or any other lawful entitlement thereto.

Particulars

- (a) On an unspecified date in 2000, the practitioner applied clients' trust moneys (being moneys other than trust moneys held by the practitioner on behalf of his client Mc) in the sum of \$3,000.00 in the payment to the OSR of the practitioner's own liability for the remittance of stamp duty with respect of the matter of Mc;
 - (b) On or about 26 September 2000, the practitioner applied clients' trust moneys (being moneys other than trust moneys held by the practitioner on behalf of his clients D and others) in the sum of \$9,675.00 in the payment to the OSR of the practitioner's own liability for the remittance of stamp duty with respect to the matter of D and others purchase from MN;
 - (c) On or about 19 December 2000, the practitioner applied clients' trust moneys (being moneys other than trust moneys held by the practitioner on behalf of his client B) in the sum of \$907.50 in the payment to the OSR of the practitioner's own liability for the remittance of stamp duty with respect to the matter of B purchase from DL;
 - (d) By the payments to the OSR particularised in paragraphs (i)-(iii) above, the practitioner fraudulently misappropriated clients' trust moneys and applied the same to his own use and benefit, namely in the discharge of his own liability for unpaid stamp duty.
 - (e) On or about 26 September 2000, the practitioner received in or about the sum of \$4,295.00 directly to his personal account from his clients' D and others, which amount included trust moneys in the sum of \$3,564.49 on account of stamp duty;
 - (f) The said moneys ought have been held by the practitioner on trust for his clients' D and others or alternatively on trust for the clients whose trust funds were applied by the practitioner in payment of stamp duty as particularised in paragraph 7(a)(ii) hereof;
 - (g) The practitioner thereby fraudulently misappropriated the said trust moneys and applied the same to his own use and benefit.
 - (h) On 8 January 2002, the practitioner paid trust moneys in the sum of \$10,018.01 held on behalf of his clients Mc (\$3,000.00), D and others (\$6,110.51) and B (\$907.50), or alternatively on behalf of the clients whose trust funds were applied by the practitioner in payment of stamp duty as particularised in paragraphs 7(a)(i)-(iii) hereof, to the OSR in the discharge of his own liability for the remittance of stamp duty in respect of returns for 2001;
 - (i) The said returns did not include any liability for stamp duty on behalf of, or in respect of the transactions concerning the clients Mc, D and B to which the said trust moneys of \$10,018.01 were referable;
 - (j) The practitioner thereby fraudulently misappropriated clients' trust moneys and applied the same to his own use and benefit, namely the discharge of his own liability for unpaid stamp duty.
8. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that, further to the matters particularised in charges 1-7 hereof, he, being a solicitor and trustee of the property has, during the period December 2001 to August 2002 failed to keep, operate and conduct his trust account in a proper and professional manner, and had engaged in the various respects particularised hereunder, in breaches of the *Trust Accounts Act 1973* and the *Trust Accounts Regulation 1999*.

Particulars

- (a) At all material times the practitioner maintained trust bank accounts with the W and with the N;
- (b) Generally:
 - (i) The N trust account had been inactive between January 2000 and December 2001;
 - (ii) Both trust accounts were active between January 2002 and March 2002;

- (iii) The W trust account was inactive from 11 March 2002;
 - (iv) The N trust account remained active from March 2002.
- (c) During the period December 2001 to July 2002 the practitioner failed, at the end of every month, to reconcile the trust account cash book with the trust bank balance and the trust account ledger, in breach of s12(1) of the *Trust Accounts Regulation*. Consequent upon an examination of the practitioner's accounts by a Society accountant on 5 July and 19 July 2002, the reconciliations for December 2001 were completed in July 2002, and the reconciliations from December 2001 were completed in or about August 2002;
- (d) With respect to the W trust account:
- (i) Details of the receipt and payment of trust moneys were not entered in the trust account cash book from 1 January 2002, in breach of s11(1) of the *Trust Accounts Regulation*;
 - (ii) Trust ledger accounts were not maintained from 1 January 2002, in breach of ss13, 14 and 15 of the *Trust Accounts Regulation*;
 - (iii) Trust receipts were not issued for certain funds deposited to the trust bank account, and were issued incomplete in respect of other deposits, in breach of s5 of the *Trust Accounts Regulation*;
 - (iv) Consequent upon an examination of the practitioner's accounts by a Society accountant on 5 July and 19 July 2002, the said trust irregularities were rectified in July 2002 in respect of January 2002 transactions, and were otherwise rectified in or about August 2002.
- (e) With respect to the N trust account:
- (i) Details of the receipt and payment of trust moneys were not entered in the trust account cash book from January 2002, in breach of s11(1) of the *Trust Accounts Regulation*;
 - (ii) Trust ledger accounts were not maintained from January 2002, in breach of ss13, 14 and 15 of the *Trust Accounts Regulation*;
 - (iii) Trust receipts were not issued for some 12 deposits totalling \$397,216.67 to the trust bank account between March 2002 and June 2002, in breach of s5 of the *Trust Accounts Regulation*;
 - (iv) Duplicate trust deposit forms were not available for some six trust bankings between March and April 2002, in breach of s9 of the *Trust Accounts Regulation*;
 - (v) Consequent upon an examination of the practitioner's accounts by a Society accountant on 5 July and 19 July 2002, the said trust irregularities (other than paragraph (iv) above) were rectified in or about August 2002.
 - (vi) On 15 May 2002, the practitioner drew trust cheque number 902 in the sum of \$18,470.00 payable to his client F, in circumstances where the amount of the payment was more than the amount of cleared funds held in the trust account for the said client, in breach of s10(1) of the *Trust Accounts Regulation*;
 - (vii) In consequence thereof the N trust account was overdrawn \$1,142.59 on 24 May 2002, upon payment of the said cheque;
 - (viii) The said trust deficiency was not rectified until 13 June 2002 when the practitioner, in breach of s7(3) of the *Trust Accounts Act*, deposited to the trust account a cheque for \$18,470.00 representing settlement proceeds the practitioner had received on behalf of the said client on 14 May 2002, and, in breach of s5 of the *Trust Accounts Regulation*, issued a receipt back dated to 14 May 2002 in respect of the said deposit.
9. That the practitioner is guilty of unprofessional conduct or practice in that, in relation to the conduct of his practice:

- (a) He has been guilty of serious neglect or undue delay; and/or
- (b) He has been guilty of a failure to maintain reasonable standards of competence or diligence;

in relation to the conduct of the matter M purchase from P:

Particulars

- (a) The practitioner acted for the purchaser, M in a contract for the purchase of real property, which settled on 26 February 2001;
- (b) On 10 April 2001, the practitioner received into his trust account funds requested of the client for stamp duty (\$5,650.00) and registration fees (\$496.00);
- (c) The practitioner has, since April 2001, failed to stamp the contract of sale and transfer or to lodge the transfer for registration;
- (d) The practitioner has misplaced, since settlement the executed transfer and vendor mortgagee release;
- (e) The practitioner has failed, since settlement, to take any or any sufficient steps to facilitate registration of the said transfer, or to protect, whether by caveat or otherwise, the clients' interest in and entitlement to the property the subject of the transfer;
- (f) On 4 February 2002, the practitioner paid the said sum of \$6,146.00 held in trust by him on account of stamp duty and registration fees to his service company trust ledger account for payment (or purported payment) of the clients' costs in connection with an unrelated matter.

10. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that, in the conduct of the matter of *TH v R*, he engaged in the conduct particularised hereunder in breach of his duty to his client, R, or alternatively, in breach of his duties to the court, his opponents and R.

Particulars

- (a) On 12 September 2001, TH, as plaintiff, commenced proceedings against R as defendant in the Sandgate Magistrates Court for the recovery of an alleged debt of \$6,105.45;
- (b) In or about November 2001, the defendant's father, AR, a long standing client of the practitioner, engaged the practitioner to file a Defence to the proceedings on behalf of R. A Notice of Intention to Defend and a Defence were filed with the court on or about 3 December 2001 by the practitioner as solicitor for the defendant;
- (c) On 14 February 2002, the practitioner, as solicitor for the defendant, responded to a request for further and better particulars of the Defence;
 - (i) On 4 June 2002, the plaintiff obtained judgment against the defendant in the sum of \$8,151.01 in default of the defendant filing a List of Documents;
 - (ii) On 15 July 2002, R received a letter from the plaintiff's solicitors dated 21 June 2002 informing her that judgment had been entered against her;
 - (iii) On 28 July 2002, R was served with a Bankruptcy Notice.
- (d) Between the commencement of the proceedings on 12 September 2001 and 15 July 2002 R:
 - (i) Was unaware of the existence of the proceedings;
 - (ii) Was unaware that her father had engaged the practitioner to act on her behalf;
 - (iii) Was unaware that the practitioner had filed a Notice of Intention to Defend and Defence on her behalf;
 - (iv) Was unaware that the plaintiff was seeking orders that the Defence be struck out in consequence of her failure to file an Affidavit of Documents;
 - (v) Was unaware that judgment by default had been entered against her.
- (e) Between 12 September 2001 and 15 July 2002, R:
 - (i) Received no communication from the practitioner concerning the proceedings;
 - (ii) Gave no instructions to the practitioner concerning the proceedings.
- (f) In the premises that the practitioner was retained as solicitor for R by her agent, AR, the practitioner, in breach of his duties as a solicitor:
 - (i) Failed to inform his client, R, either fully or at all of her rights in relation to the proceedings;
 - (ii) Failed to keep R apprised of all significant developments in the proceedings;
 - (iii) Failed to give undivided fidelity to R's interests, unaffected by his own interests, the interests of her father, AR, or by his professional relationship with her father; and
 - (iv) Failed to treat R fairly and in good faith.
- (g) Alternatively, in the premises that he was not retained as the solicitor for R, the practitioner, in breach of his duty as a solicitor:
 - (i) Mislead the court by falsely representing to the court that he acted for R;
 - (ii) Mislead the plaintiff's solicitors by falsely representing to them that he acted for R;
 - (iii) Failed to take any or any satisfactory steps to ensure that R was informed of the proceedings so that she could be appropriately represented and her interests protected.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr R G Perrett, solicitor of Messrs Clayton Utz Solicitors instructed by the Queensland Law Society Incorporated
- (b) For the Practitioner:
There was no appearance on behalf of the Practitioner
- (c) For the Complainant:
There was no appearance on behalf of the Complainant, R

Findings and Orders

1. The Tribunal finds that service of all relevant documents upon the Practitioner has been validly effected.
2. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge dated 20 March 2003 in the following respects:
 - (a) in charge 6(f)(i) the figure "\$136,010.92" should be "\$136,010.42";

- (b) in charge 6(f)(iii) the figure "\$10,017.51" should be "\$10,018.01";
 - (c) in charge 7(c)(i) the figure "10,017.51" should be "\$10,018.01" and the figure "\$6,010.01" should be "\$6,010.51";
 - (d) in charge 7(c)(ii) the figure "\$10,017.51" should be "\$10,018.01";
 - (e) in charge 11(f) the words "said sum of \$6,146" should read "balance sum of \$6,036".
3. The Tribunal finds the allegations set out in paragraphs 1, 2, 3(e), 3(g), 5, 6, 7(c), 9, 10 and the second limb of charge 11 proved.
 4. The Tribunal finds that the charges as a whole amount to professional misconduct and that the Practitioner is guilty of professional misconduct.
 5. The Tribunal orders that the name of the Practitioner be struck from the roll of solicitors of the Supreme Court of Queensland.
 6. The Tribunal orders that the Practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to these proceedings, and the costs of the Clerk and the recorder, to be agreed, and failing agreement as assessed by Monsour Legal Costs Pty Ltd.
 7. The Tribunal finds that the complainant, R, has suffered pecuniary loss because of the Practitioner's misconduct and that she has given notice of the claim for compensation to the Council of the Queensland Law Society Incorporated.
 8. The Tribunal further orders that the Practitioner pay to R by way of compensation, the amount of \$3,355.00, such amount to be paid within 28 days from the date of this order.

Reasons

The practitioner has been served with the Notice of Charge and with the affidavits which evidence those charges. The practitioner has not appeared and has not provided an explanation.

The Tribunal, after reading the material in support of the charges and hearing Mr Perrett, finds the allegations in charges 1, 2, 3 (e), 3 (g), 5, 6, 7 (c), 9 and 10 and the second limb of charge 11 proved.

The Tribunal was invited in relation to charges 7 (a) and (b) and 8 to find that the practitioner had, in effect, stolen money from persons unknown to undertake the stamping for the clients referred to in those charges rather than providing the funds from his own resources. It is not an inference that the Tribunal is prepared to draw.

The other charges referred to in the Notice of Charge are in the alternative and it is not necessary for us to deal with those.

We find that the charges amount to professional misconduct.

We find the practitioner guilty of professional misconduct.

We find that in relation to the relevant charges, the practitioner acted dishonestly. He acted with gross disregard for his obligations to keep adequate records.

His conduct in relation to R indicates a gross disregard for his obligations as a solicitor. His explanation, if accepted, indicates a fundamental misunderstanding of his role as a solicitor.

He has not appeared to provide any explanation. If he had appeared, it is difficult to conceive an explanation which would have persuaded us to a different view.

This Tribunal's role is primarily protective. The protection of the public requires that he no longer practise law. His shortcomings in relation to his dealing with Government Departments, the Court and his colleagues requires a similar outcome.

There is a claim for compensation by R. The Tribunal finds that the claim for compensation fairly arises from the charges that have been brought.

We are satisfied that she has suffered pecuniary loss because of the practitioner's professional misconduct.

We are satisfied that she has given notice of the claim for compensation and particulars to the Council of the Law Society.

To avoid any concern as to clarification, it is not being suggested that charge 10 of itself would amount to professional misconduct. Rather than isolate the different charges, we will look at the charges as a whole.