SUPREME COURT OF QUEENSLAND

CITATION:	*QLS v Carberry; A-G v Carberry* [2000] QCA 450
PARTIES:	**QUEENSLAND LAW SOCIETY INCORPORATED** (complainant/appellant) **v** **CHRISTOPHER MICHAEL CARBERRY** (defendant/respondent) **THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE** (complainant/appellant) **v** **CHRISTOPHER MICHAEL CARBERRY** (defendant/respondent)
FILE NO/S:	Appeal No 2949 of 2000 Appeal No 3217 of 2000 Solicitors Complaints Tribunal Charge No 31
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Solicitors Complaints Tribunal
DELIVERED ON:	3 November 2000
DELIVERED AT:	Brisbane
HEARING DATE:	7 September 2000
JUDGES:	Pincus JA, Moynihan SJA and Atkinson J Joint reasons for judgment of Moynihan SJA and Atkinson J; separate reasons of Pincus JA, concurring as to the orders made
ORDER:	**1. The order of the Solicitors Complaints Tribunal be set aside;** **2. The name of the respondent be struck off the Roll of Solicitors of the Supreme Court of Queensland; and,** **3. The respondent pay the appellants' costs of and incidental to the appeal to be assessed.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – REMOVAL OF NAME FROM ROLL PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – CONFLICT OF DUTY AND INTEREST – SECRET PROFIT

PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – OTHER ACTS AND OMISSIONS

PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – OTHER MATTERS

PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – DISCIPLINARY ORDERS – IN GENERAL – solicitor/respondent placed on various charges – determination by Solicitors Complaints Tribunal – whether conduct of the respondent amounts to suspension or striking off – respondent in a position of conflict with respect to a loan made on behalf of his client – series of transactions with the ultimate effect of satisfying obligations owed by him and/or his associate to a third party

Trusts Account Act 1973 (Qld), s8(1)

Adamson v Queensland Law Society Incorporated [1990] 1 QdR 498, referred to
Attorney-General v Bax [1999] 2 QdR 9, followed
Bolster v The Law Society of New South Wales, NSWCA No 233 of 1982, 20 September 1982, referred to
Clyne v New South Wales Bar Association (1960) 104 CLR 186, referred to
Cypressvale Pty Ltd v Retail Shop Leases Tribunal [1996] 2 QdR 462, referred to
Harvey v Law Society of New South Wales (1975) 49 ALJR 362, referred to
Law Society of New South Wales v Moulton [1981] 2 NSWLR 736, referred to
Mellifont v The Queensland Law Society Inc [1981] 1 QdR 17, followed
Pettitt v Dunkley [1971] 1 NSWLR 376, referred to
The Law Society of New South Wales v McNamara, NSWCA No 160 of 1979, 7 March 1980, followed
Ziems v Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279, followed

COUNSEL: DG Clothier for the appellant in Appeal No 2949 of 2000
PA Keane QC with G Cooper for the appellant in Appeal No 3217 of 2000
PJ Feeney for the respondent in both Appeals

SOLICITORS: Brian Bartley & Associates for the appellant in Appeal No

2949 of 2000
Crown Law for the appellant in Appeal No 3217 of 2000
AW Bale & Son for the respondent in both Appeals

[1] **PINCUS JA:** I have had the advantage of reading the joint reasons of Moynihan SJA and Atkinson J. As their Honours explained, the respondent solicitor was paid to help an old woman Mrs Ada David, in managing her financial affairs. Mrs David made a complaint to the appellant Society in February 1998; the respondent was then asked for an explanation of a loan of $10,000 made by Mrs David, by a cheque signed on her behalf by the respondent under a power of attorney. After much fruitless correspondence, solicitors wrote on behalf of the respondent on 1 November 1999 informing the Society that the loan in question, made in September 1997, was made at a time when, because of knowledge of the business interests of one Large, the respondent had no reason to doubt Large's ability to repay the loan. Large was not in fact the borrower; the loan agreement provided that the borrower would be Hollydene Enterprises Pty Ltd, Large's company; Large guaranteed repayment of the loan.

[2] On 21 February 2000 the respondent swore that he had believed "a loan to Mr Large" would serve his client's interests for reasons he stated, including that he believed Large would have no difficulty in meeting his obligations under the loan **and** that it was to be secured by a mortgage debenture. Two days later the respondent swore that he told his client "the security offered was only as good as the personal guarantee but that I knew the borrower and he was a person of substance". This implies, of course, that he thought the mortgage debenture (one of the justifications given) would be worthless and the respondent gave evidence before the Tribunal to the effect that that was so.

[3] The respondent also told the Tribunal that he knew, when the loan was made, that "there was a problem with debts owed by" Large to one Brooke. The respondent said that he did not know how long those debts had been owed, but they were "well overdue". On this material the conclusion that, contrary to what he had told the Society, the respondent had reason to think that Large was or might be in financial difficulty was inevitable. Perhaps the respondent's own financial problems led him into advising a loan on Large's credit, advice which I suspect the respondent would not, except in a desperate situation, have given. Further, it was clear that the respondent never suggested to his client that the person relied on to repay the loan, who was said by the respondent to be "eager to borrow money", was already having trouble paying debts.

[4] An issue before the tribunal, as to the loan from Mrs David, was identification of the reason why the respondent advised the client to make the loan, representing it to be safe, when it plainly was not; was there merely an honest mistake? According to the Society's case, that reason was a complex one, the essence of it being that one Lambert was pressing Brooke for payment of money which was jointly due by the respondent and Brooke and the $10,000 was to (and did) go to a company associated with Lambert. Brooke was pressing Large for payment of monies owed by Large to him and so the $10,000 would relieve financial difficulty at two points: Large's indebtedness to Brooke and Brooke's to Lambert.

[5] There was a dispute before the Tribunal about this aspect of the matter. The critical point made by the respondent in his evidence was that Brooke was under no obligation to Lambert. As Mr Clothier contended for the Society, that cannot be accepted. In a document, referred to above, sent by the respondent's solicitors on 1 November 1999 on his behalf, one finds it asserted that at the relevant time:

> "... Lambert had been pressing Brooke for payment on a daily basis. He had not been pressing Carberry as Lambert was aware that Carberry had only recently been discharged from bankruptcy and still had no assets to support his guarantee".

Moynihan SJA and Atkinson J have made reference to the absence of reasons for the Tribunal's conclusions, which included that:

> "... in the circumstances of potential conflict of interest, the interests of others were inadvertently or accidentally advanced".

But the respondent admitted before the Tribunal that the approach to him for the $10,000 came from Brooke, who was (as had earlier been admitted, on 1 November 1999) being pressed by Lambert for repayment. So it is impossible to see how it could be said that the advancing of the interests of the respondent's co-guarantor Brooke was inadvertent or accidental. As Mr Clothier submitted, the effect of the transaction brought about by the respondent's signing over $10,000 of Mrs David's money was to transfer from Brooke to Mrs David difficulties Brooke was experiencing in recovering money from Large; this was in my view no accident.

[6] It is my respectful opinion that, at least in major matters, the Tribunal's practice of stating unreasoned conclusions, when dealing with such a serious question as possible removal of a practitioner, is entirely unsatisfactory. A result of the practice can be that conclusions are reached as a matter of impression, rather than by careful analysis of the details of the evidence. Perhaps the Tribunal members are not adequately paid; for whatever reason, they were unwilling or unable to formulate any explanation of the basis of the assertion that the respondent's advancement of the interests of others than the client was inadvertent or accidental.

[7] The case has in common with *Attorney-General v Bax* [1999] 2 Qd R 9, that the respondent has not been candid or co-operative in answering the complaint made against him. This is in my opinion an important factor in determining that the circumstances associated with the loan using Mrs David's money, considered alone and without regard to other charges, warrant a striking-off order. A legal practitioner may let a client down in many ways, mishandling of clients' money being only one of them; but fair dealing with such money is basic. Although this is not by any means the worst instance of professional misbehaviour that has come before the Court, it is bad enough to force one to the unpleasant conclusion that mere suspension is insufficient.

[8] Subject to these observations I am in general agreement with the joint reasons of Moynihan SJA and Atkinson J. I also agree with the orders their Honours propose.

[9] **MOYNIHAN SJA and ATKINSON J:** On 2 December 1999 the Solicitors Complaints Tribunal found the following charges proved against the respondent solicitor:

1. He had acted in circumstances of a conflict of interest (charge 1 of the Notice of Charge);

2. on three occasions he had failed to provide adequate explanations of his dealings when they were sought by the Law Society (charges 2, 4 and 9);
3. he had withdrawn funds for himself in circumstances not authorised by s 8(1)(c) of the *Trusts Account Act* 1973 (charge 3);
4. he had failed to adequately maintain records in relation to trust moneys (charge 5); and,
5. on two occasions he had failed to provide the Law Society with an auditor's report as required by the *Trust Accounts Act* 1973 (charges 7 and 8).

[10] Charge 6 relates to the withdrawal of trust account funds other than in compliance with the *Trust Accounts Act* 1973. The Tribunal found that the following allegations in the charge were proved but was not satisfied that other occasions, the subject of the charge, were made out:

> "(a) that on 14 August 1998, the practitioner paid from his trust account to S Tokona the sum of $1,000.00; as at 14 August 1998, the practitioner held trust funds on behalf of S Tokona the sum of $606.00 only.
>
> (b) On 18 September 1998, the practitioner paid the sum of $3,500.00 from his trust account to his general account; the sum of $3,500.00 included an amount of $1,500.00 received by the practitioner on account of counsel's fees, which counsel's fees were then unpaid and which remained unpaid until 5 October 1998.
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> (d) On 5 August 1998, the practitioner paid the sum of $3,207.00 from his trust account to his general account in purported reimbursement of registration fees in circumstances in which the practitioner's general account cheque drawn 27 July 1998 in the sum of $3,207.00 in respect of those registration fees had, on 29 July 1998, been dishonoured and a further general account cheque drawn on 5 August 1998 in the same amount had not been presented by the payee and the registration fees had therefore not been paid."

[11] Finally the Tribunal was not satisfied charge 3 had been made out.

[12] The Tribunal determined that charges 1, 2, 4 and 9 constituted professional misconduct while charges 5, 6(a), 6(b), 6(d), 7 and 8 constituted unprofessional conduct. It suspended the respondent from practice for 12 months effective from 1 May 2000 and ordered that he attend and successfully complete a practice management course conducted by the Queensland Law Society Incorporated prior to applying for his practicing certificate. He was ordered to pay the Law Society's costs to be assessed.

[13] Each of the Queensland Law Society Incorporated and the Attorney-General and Minister for Justice appeals to this court contending that the proper order was that the name of the respondent be struck off the Roll of Solicitors for the Supreme Court of Queensland. The appeals were heard together and may be disposed of together.

[14] Although the totality of the conduct found against the respondent must be considered, the most significant aspect relates to the Tribunal's findings concerning charge 1. That charge was in these terms:

> "1. That the practitioner acted in circumstances of conflict between the interests, on the one hand, of his client Mrs Ada David ("Mrs David") and the interests, on the other hand, of himself and Peter Brooke ("Brooke") and preferred his own interests and those of Brooke to Mrs David's interests.
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> **Particulars**
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> (a) On or about 29 July 1996, Arnold George Lambert ("Lambert") loaned the sum of $21,243.46 to Mark Lee Stevens ("Stevens") repayable at the expiration of one month together with interest in the sum of $2,000.00; repayment of that loan was guaranteed by Brooke (who was at that time the principal of the firm Carberrys) and by the practitioner (who was at that time employed by Brooke) pursuant to a Deed of Guarantee dated 29 July 1996.
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> (b) The loan from Lambert was made for the purpose of enabling Stevens to repay loans which had been arranged by the practitioner in late 1995 or early 1996 for the purpose of enabling Stevens to make restitution and to pay Stevens' legal costs in connection with criminal charges then pending against Stevens.
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> (c) Stevens defaulted in repayment of the loan from Lambert.
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> (d) As at 4 August 1997:
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> (i) Robert Charles Harold Large ("Large") was a business associate and client of Brooke;
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> (ii) Large was indebted to Brooke for legal fees and in respect of business debts;
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> (iii) Large was a director of and shareholder in Hollydene Enterprises Pty Ltd, ACN 072 169 487 ("Hollydene").
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> (e) During the period August-September 1997, the practitioner acted as attorney for Mrs David pursuant to a written power of attorney.
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> (f) On or about 4 August 1997, the practitioner agreed to lend to Hollydene from funds belonging to Mrs David, the sum of $10,000.00 repayable on 5 August 1998 with interest payable quarterly at 18% per annum reducing to 13% per annum. The loan to Hollydene was secured by:
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> (i) a mortgage debenture given by Hollydene to Mrs David; and
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> (ii) Large's personal guarantee.
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> (g) Lambert was at all material times a director of and shareholder in Fasuma Pty Ltd, ACN 009 992 698 ("Fasuma").
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> (h) Hollydene directed that the amount of the loan, namely $10,000.00 be paid to Fasuma.
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> (i) On or about 5 September 1997, the practitioner drew a cheque in the sum of $10,000.00 on an account conducted at the Macquarie Bank styled "AC David Portfolio Account" which cheque was drawn in favour of Fasuma as payee. The cheque was duly paid on 5 September 1997.
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> (j) The payment referred to in sub-paragraph (i) was made in part satisfaction of the debt due to Lambert arising from the loan referred to in sub-paragraph (a)."

[15] The Tribunal found that there was a potential conflict of interest but was not satisfied that the respondent deliberately preferred the interest of someone other than his own client, whether that be "his own interest or the interest of himself and Brooke". It went on to find that the respondent's attention to instructions "displayed a lack of competence and ignorance" and that "in the circumstances of the potential conflict of interest, the interest of others were inadvertently or accidentally advanced".

[16] The respondent, a sole practitioner practicing under the name Carberrys, had been admitted on 31 January 1984. He was bankrupted on 29 September 1993. By a contract dated 4 May 1994, Peter John Newton Brooke purchased the respondent's practice from his trustee in bankruptcy and conducted it under the name Carberrys until 30 June 1997 as sole principal. Brooke employed the respondent in the conduct of the practice. This arrangement continued until 30 June 1997 and on 1 July of that year the respondent commenced practice on his own account in his own name until 10 February 1998, when he purchased the practice of Power and Power Lawyers. He then practiced under that name.

[17] In April or May 1997, Mrs Ada Catherine David had engaged the respondent to assist in managing her financial affairs on a $100 a month retainer. Mrs David was an elderly widow who had recently become possessed of modest funds as the consequence of the sale of the matrimonial home. Charge 1 relates to a loan of $10,000 of Mrs David's money made in September 1997.

[18] According to the documentation, Mrs David's loan was made to Hollydene Enterprises Pty Ltd, a company associated with a Mr Robert Large. Large was indebted to Brooke for past professional and business dealings and was well known to the respondent. Large directed that Mrs David's funds be paid to Fasuma Pty Ltd, a company controlled by Mr Arnold Lambert. Lambert was a former client of Carberrys to whom both the respondent and Brooke were indebted. Their indebtedness was the consequence of an advance made by Lambert to a Mr Mark Stevens, yet another client of Carberrys, who was indebted to de Silva. Lambert's loan to Stevens was apparently an interest only loan at a high monthly rate of interest. Both Carberry and Brooke executed a guarantee in favour of Lambert. In fact, the advance from Lambert to Stevens was paid directly to a vendor from whom de Silva was purchasing a property and had the consequence of reducing Steven's indebtedness to de Silva.

[19] At the time of the loan by Mrs David to the respondent's knowledge, Lambert had obtained judgment against Stevens and was pressing Brooke for payment under the guarantee. He was not pursuing the respondent who had recently been discharged from bankruptcy and was apparently without assets of any consequence.

[20] It will be recalled that Mrs David's loan was documented as being made to Hollydene Enterprises Pty Ltd. The respondent knew Hollydene was without assets – he took no steps to have a mortgage debenture entered into to secure the loan assessed for stamp duty or registered. He sought to justify the transaction on the basis the loan was guaranteed by Large who the respondent considered to be of some financial substance. He also knew however that Large owed money to Brooke, payment of which was overdue. He apparently had some financial statements and other information because Carberrys had acted for Large and entities

apparently controlled by him. One of these entities, not Hollydene, the respondent thought, had some sort of interest in management rights associated with a sporting club. In fact, the respondent had not investigated Large's financial affairs so as to be able to form a view of his reliability.

[21] Mrs David's evidence was that the loan was made without her authority. The respondent says he had her express authority, in any event he had a power of attorney. The respondent did not disclose the circumstances of the loan to Mrs David or suggest she receive independent advice. The conclusion that a fully informed or properly advised client would not have made the loan seems inescapable.

[22] It will be recalled that the Tribunal was satisfied that charge 2 was made out. This was to the effect that the respondent had failed to respond to the Society's requirements for an explanation as a consequence of a complaint by Mrs David, which was being investigated by the Society. It is not irrelevant that charges 4 and 9, which the Tribunal also found to have been made out, were also in respect of failure to adequately explain dealings, the subject of complaint by clients other than Mrs David.

[23] By letter of 4 February 1998, the Society had sought from the respondent information which was responded to by a letter of 16 March 1998, with an epitome of a mortgage recording a loan of $10,000 to Hollydene secured by a mortgage debenture supported by a guarantee by Large.

[24] By letter of 20 May 1998, the Society pointed out to the respondent that the cheque, evidenced in the advance, was not payable to Hollydene and sought to sight the original mortgage debenture and the guarantee. The respondent replied on 11 June 1998, saying that he would attend to the registration of the debenture, but did not provide a copy of it and referred to his response of 16 March 1998. On 10 July 1998, the respondent told the Society that the original executed security documents were in storage and that he was "having trouble with the storage company" and that Large had contacted him and wished to redeem the debt by 8 August 1998.

[25] The Society wrote again on 12 January 1999 recording the respondent's explanation that the payment to Fasuma on 5 September 1997, represented a loan to Hollydene made on 5 August 1997 and sought further explanations as to a number of matters.

[26] The respondent replied by letter of 23 February 1999. The Society's query as to the relationship between Fasuma and Hollydene drew the response that the payment had been made to Fasuma at the direction of Hollydene. As to the purpose of the payment to Fasuma, the respondent replied that he was unaware of any relationship between that company and Hollydene. In answer to a query he said he did not know whether Fasuma had repaid the sum of $10,000 and that he did not act for that company.

[27] The Society sought further explanation of the transactions by letters of 5 March, 23 March and 15 April, the terms of which it is unnecessary to consider. There was no response. It should be noted that during this period, the Society was pursuing other matters with the respondent, some of which became the subject of the charges.

[28] The next event of consequence for the present purposes was when, on 28 October 1999, the Society wrote to the respondent's solicitors enclosing a draft of charges, including relating to Mrs David's complaints, and a copy of a draft affidavit by Lambert, in which he stated that the $10,000 paid to Fasuma was in respect of money owed to him by Stevens under a loan guaranteed by Carberry and Brooke. The letter gave Mr Carberry until 1 November to show cause why his practicing certificate should not be suspended and why the Council should not resolve to appoint a receiver of trust property held by him.

[29] This, at last, drew a response. The respondent's solicitors lodged a submission in response on 1 November 1999. In the document to show cause it is unequivocally stated that a loan had been made to enable de Silva to complete a purchase.

[30] In an affidavit sworn on 21 February 2000, the respondent put forward, apparently for the first time in writing, that there was no conflict of interest because he was aware that no monies had ever been advanced from Lambert to Stevens, so there was no loan.

[31] Confronted with the discrepancy between the acknowledgment in the submission of a loan and his subsequent evidence that it had not, the respondent attributed it to the haste with which the submission was prepared. This, however, is to be put in the context of the Society having pursued, without success, a satisfactory explanation for the transaction over a period of some 20 months. An explanation proffered in evidence that the transaction was structured by Brooke without reference to the respondent does not support there having been no loan, but rather, is to the contrary.

[32] Similarly other reasons advanced such as absence of a direct disbursement authority from Stevens, the direct payment to de Silva called for further inquiry rather than founding a belief there was no loan.

[33] That the respondent should seek to argue that there was no conflict of interest because the guarantee he normally executed in circumstances canvassed was worthless, does little to enhance his reputation or position.

[34] It is difficult to avoid the conclusion that the respondent's protracted failure to comply with the Law Society's requirements in relation to the investigation of Mrs David's complaint, as was found in respect of charge 2, was for the purpose of avoiding exposing the details of the transaction. By the same token it is difficult to avoid the conclusion that, notwithstanding his attempts at explanation, or in part because of them, there was a conflict of interest and the respondent was aware of it.

[35] At best for him, the respondent may therefore be fortunate that the Tribunal found there was a potential conflict of interest and was not satisfied that he deliberately preferred his own or Brooke's interest to that of his client.

[36] It will be recalled that having made those findings, the Tribunal went on to conclude that the respondent's attention to instructions displayed lack of competence and ignorance and that the interests of others were inadvertently or accidentally advanced. It is desirable for reasons canvassed in cases such as *Pettitt v Dunkley* [1971] 1 NSWLR 376; *Adamson v Queensland Law Society Incorporated* [1990] 1 QdR 498; and, *Cypressvale Pty Ltd v Retail Shop Leases*

Tribunal [1996] 2 QdR 462, that the Tribunal give reasons, however brief, exposing the basis of that finding, but it did not do so.

[37] That the Tribunal did not, in the light of the evidence canvassed earlier, give reasons, is probably of little consequence in this particular case. The facts face the respondent with the same dilemma that confronted the practitioner in *Bolster v The Law Society of New South Wales*, NSWCA No 233 of 1982, 20 September 1982. The more he sought to extricate himself by advancing an "innocent" explanation or justification, the more he entangled himself in a failure to appreciate elementary but critically important obligations of a solicitor to a client; see also *Law Society of New South Wales v Moulton* [1981] 2 NSWLR 736 at 740.

[38] It is now trite to say that the primary role of proceedings such as those before the Tribunal is to protect the public from persons not fit to be held out as officers of the court and as a proper person to be entrusted with the duties and responsibilities of the solicitor: *Harvey v Law Society of New South Wales* (1975) 49 ALJR 362 at 364; *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279; *Clyne v New South Wales Bar Association* (1960) 104 CLR 186; *Adamson v Queensland Law Society Incorporated* [1990] 1 QdR 498. As was pointed out in *Attorney-General v Bax* [1999] 2 QdR 9 at 21 by Pincus JA, there is a subsidiary purpose in the public interest and that is to deter other practitioners who might otherwise engage in professional misconduct.

[39] It would be inconsistent with the court's duties to preserve the standards of professional practice not to conclude that what has been found against the respondent demonstrates unfitness to practice.

[40] The Tribunal did not provide any reasons in support of its decision to suspend the respondent from practice for 12 months and require that he attend and successfully complete a practice management course. Once it has been determined that a solicitor is unfit to practice, a suspension, even coupled with an order to satisfactorily complete a practice management course, could only apply in exceptional circumstances: *Attorney-General v Bax* ante at 20; *Ziems v Prothonotary of the Supreme Court of New South Wales* ante at 268; *Mellifont v Queensland Law Society Incorporated* [1981] 1 QdR 17 at 30-31. An order for suspension should be based on a view that, at the termination of a period of suspension, the practitioner will no longer be unfit to practice: *The Law Society of New South Wales v McNamara*, NSWCA No 160 of 1979, 7 March 1980, approved in *Mellifont v The Queensland Law Society Inc* ante at 31.

[41] The course of conduct found against the practitioner and the explanations he proffered for it, are not conducive of a conclusion that, at the termination of the period, the respondent would be no longer unfit to practice and it is not in the public interest that he should be permitted to do so. The fact that his name has been removed from the Roll of Solicitors does not prevent the respondent in the future re-establishing his credentials and worthiness to be a solicitor and readmitted.

[42] The orders of the Tribunal that the respondent be suspended from practice for 12 months effective from 1 May 2000 and that he attend and successfully complete a practice management course conducted by the Queensland Law Society Incorporated prior to applying for a practicing certificate should be set aside. The

name of the respondent should be struck off the Roll of Solicitors of the Supreme Court of Queensland and the respondent should pay the appellants' costs of and incidental to the appeal to be assessed.