

The Solicitors Complaints Tribunal

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr DG Searles, solicitor, McCullough Robertson Lawyers
- (b) For the practitioner:
Mr WM Potts, solicitor, Price & Roobottom, solicitors

Findings and Orders

1. The tribunal grants leave to the Queensland Law Society Incorporated to amend the notice of charge in the following manner:
 - (a) in notice of charge particular 4.2 in the final line, after the words “firm’s general trust account” insert a full stop and delete the words “to the credit of the client’s individual trust ledger account”;

- (b) in notice of charge particular 4.3 in the second line after the word “from” delete the words “his client’s individual” and in lieu thereof insert the “firm’s general” and delete the word “ledger” after the word “trust” in the same line.
2. The tribunal finds the charges, as amended, proven by the admission of the practitioner’s legal representative.
3. The tribunal accepts the practitioner’s plea of guilty to the charges of professional misconduct, as amended, and finds the practitioner guilty of professional misconduct.
4. The tribunal orders that the name of Peter Jensen be struck from the Roll of Solicitors of the Supreme Court of Queensland.
5. The tribunal further orders that Peter Jensen pay the costs of and incidental to this charge including the costs of the clerk and the recorder, such costs to be assessed by Monsour Legal Costs Pty Ltd.

In the Matter of Jennifer Mary Cheney

Case Number: SCT/55
Date of Hearing: 30 April 2002
Appearing Before: Mr P Cooper (Chairperson)
Mr M Conroy
Ms I Vallin-Thorpe (Lay Member)
Penalty: Struck Off

Charge — Failure to supervise

That between 30 November 1999 and 27 October 2000, the solicitor failed to properly supervise her employee bookkeeper Tom Partos to ensure that he conducted estate administration files properly and that he did not improperly deal with client trust moneys.

Particulars — Estate EJS deceased

- 1.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.

- 1.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 1.3 As at 5 July 2000, there was the sum of \$49,209.25 standing to the credit of the individual trust ledger account for the estate of EJS deceased.
- 1.4 On or about 5 July 2000, the employee caused the sum of \$12,567.90 to be withdrawn from the client’s individual trust ledger account by cheque drawn on that account in favour of one JPB.
- 1.5 JPB was in no way connected with the administration of the estate of EJS deceased and was a beneficiary of another unrelated estate of LVC deceased which the solicitor was acting in the administration of around the same time.
- 1.6 The said moneys were withdrawn without the knowledge or authority of the executor of the estate of EJS deceased and constituted misappropriation of those moneys.

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- 1.7 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 1.8 The solicitor has not repaid the said sum of \$12,567.90 to the estate of EJS deceased.

Particulars — Estate LVC deceased

- 2.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 2.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 2.3 As at 30 November 1999, there was the sum of \$15,168.40 standing to the credit of the client’s individual trust ledger account.
- 2.4 On or about 30 November 1999, the employee caused to be transferred from the client’s individual trust ledger account to the solicitor’s general account the sum of \$2,500 in purported payment of legal costs.
- 2.5 At the time of the said transfer, the solicitor had not rendered a bill of costs to her client, and was not authorised by law to effect the transfer which constituted a breach of s8 of the *Trust Accounts Act* 1973.
- 2.6 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.

Particulars — Estate LVC deceased

- 3.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 3.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.

- 3.3 As at 6 December 1999, there was the sum of \$12,668.40 standing to the credit of the client’s individual trust ledger account.
- 3.4 On 30 June 2000 the solicitor sent to the client an assessment of her legal costs and outlays totalling \$2,600.50 being \$2,545.50 costs and \$55 outlays.
- 3.5 Previously \$2,500 had been transferred from the client’s individual trust ledger account to the solicitor’s general account on account of costs and outlays when the solicitor was not entitled to that amount (Particular 2), so that upon rendering the assessment of \$2,600.50 on 30 June 2000 the solicitor was then still owed \$100.50 (\$2,600.50 minus \$2,500).
- 3.6 On or about 6 December 1999 the employee caused the sum of \$1,000 to be transferred from the client’s individual trust account to the solicitor’s general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was only entitled to \$100.50.
- 3.7 Of the sum of \$1,000 transferred on 6 December 1999, the sum of \$899.50 (\$1,000 minus \$100.50) constituted misappropriation of client funds.
- 3.8 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 3.9 The solicitor has not repaid the said sum of \$899.50 to her client.

In the alternative to 3

Particulars — Estate LVC deceased

- 4.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 4.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 4.3 As at 6 December 1999, there was the sum of \$12, 668.40 standing to the credit of the client’s individual trust ledger account.

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- 4.4 On 30 June 2000, the solicitor sent to the client an assessment of her legal costs and outlays totalling \$2,600.50 being \$2,545.50 costs and \$55 outlays.
- 4.5 Previously on 30 November 1999, the solicitor had transferred \$2,500 from the client's individual trust ledger account to the solicitor's general account on account of costs and outlays when the solicitor was not entitled to that amount (Particular 2), so that upon rendering the assessment of \$2,600.50 on 30 June 2000 the solicitor was then still owed \$100.50 (\$2,600.50 minus \$2,500).
- 4.6 On or about 6 December 1999, the employee caused to be transferred from the client's individual trust ledger account to the solicitor's general account the sum of \$1,000 in purported payment of legal costs.
- 4.7 At the time of the said transfer of the sum of \$1,000 on 6 December 1999, as to the sum of \$899.50 (\$1,000 minus \$100.50), the solicitor had not rendered a bill of costs to her client, had not received an authorisation in writing within s8(1)(c) of the *Trust Accounts Act 1973*, and was not otherwise authorised by law to effect the transfer which constituted a breach of s8 of the *Trust Accounts Act 1973*.
- 4.8 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 4.9 The solicitor has not repaid the said sum of \$899.50 to the client.

Particulars — Estate of LVC deceased

- 5.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 5.2 At all material times the solicitor employed her husband Tom Partos ('the employee') as a bookkeeper and delegated to him the responsibility for the firm's general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 5.3 As at 30 December 1999, there was the sum of \$11,668.40 standing to the credit of the client's individual trust ledger account.

- 5.4 On or about 30 December 1999, the employee caused the sum of \$5,000 to be transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was not entitled to the money.
- 5.5 The said transfer constituted misappropriation of client funds.
- 5.6 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 5.7 The solicitor has not repaid the said sum of \$5,000 to her client.

In the alternative to 5

Particulars — Estate of LVC deceased

- 6.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 6.2 At all material times the solicitor employed her husband Tom Partos ('the employee') as a bookkeeper and delegated to him the responsibility for the firm's general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 6.3 As at 30 December 1999, there was the sum of \$11,668.40 standing to the credit of the client's individual trust ledger account.
- 6.4 On or about 30 December 1999, the employee caused the sum of \$5,000 to be transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was not entitled to the money.
- 6.5 At the time of the said transfer the solicitor had not rendered a bill of costs to her client and was not otherwise authorised by law to effect the transfer which constituted a breach of s8 of the *Trust Accounts Act 1973*.
- 6.6 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.

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6.7 The solicitor has not repaid the said sum of \$5,000 to the client.

Particulars — Estate of LVC deceased

- 7.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 7.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 7.3 As at 28 April 2000, there was the sum of \$6,668.40 standing to the credit of the client’s individual trust ledger account.
- 7.4 On or about 28 April 2000, the employee caused the sum of \$3,500 to be transferred from the client’s individual trust ledger account to the solicitor’s general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was not entitled to the moneys.
- 7.5 The said transfer constituted misappropriation of client funds.
- 7.6 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 7.7 The solicitor has not repaid the said sum of \$3,500 to the client.

In the alternative to 7

Particulars — Estate of LVC deceased

- 8.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 8.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical

aspects of the administration of deceased estates and conveyancing files.

- 8.3 As at 28 April 2000 there was the sum of \$6,668.40 standing to the credit of the client’s individual trust ledger account.
- 8.4 On or about 28 April 2000, the employee caused the sum of \$3,500 to be transferred from the client’s individual trust ledger account to the solicitor’s general account in purported payment of legal costs.
- 8.5 At the time of the said transfer the solicitor had not rendered a bill of costs to her client and was not otherwise authorised by law to effect the transfer which constituted a breach of s8 of the *Trust Accounts Act 1973*.
- 8.6 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 8.7 The solicitor has not repaid the said sum of \$3,500 to the client.

Particulars — Estate LVC deceased

- 9.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 9.2 At all material times the solicitor employed her husband Tom Partos (‘the employee’) as a bookkeeper and delegated to him the responsibility for the firm’s general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 9.3 On or about 5 July 2000 the employee caused to be prepared and sent to the client what purported to be a final trust account statement relating to the estate administration.
- 9.4 The said trust account statement was, false in the following respects as the employee knew or ought to have known:
- (a) It recorded a payment from the trust account of \$12,567.90 in favour of the client when, in truth, that payment was made from the trust funds of another unrelated matter namely the estate of EJS deceased particulars of which are set forth in relation to particular 1 above.

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- (b) There was no record of the withdrawal from the trust account of the following sums purportedly in payment of legal costs:

Date of Withdrawal	Amount	Particulars
30.11.99	\$ 2,500	particular 2 above
06.12.99	\$ 1,000	particulars 3 & 4 above
30.12.99	\$ 5,000	particulars 5 & 6 above
28.04.00	<u>\$ 3,500</u>	particulars 7 & 8 above
Total	<u>\$12,000</u>	

- 9.5 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 9.6 Particulars 2, 3, 4, 5, 6, 7, and 8 are incorporated in this particular.

Particulars — GJB

- 10.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for GJB ('the client') in the transfer of a property to his wife.
- 10.2 At all material times the solicitor employed her husband Tom Partos ('the employee') as a bookkeeper and delegated to him the responsibility for the firm's general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 10.3 On 16 October 2000 the solicitor rendered to the client an account for costs and outlays totalling \$1,028.20 and the following day, 17 October 2000, transferred that sum from the client's individual trust ledger account to the firm's general account in payment of that account.
- 10.4 As at 27 October 2000, there was \$2,301.60 standing to the credit of the client's individual trust ledger account.
- 10.5 On 27 October 2000, the employee caused the sum of \$1,028.20 to be again transferred from the client's individual trust ledger account to the solicitor's general account in circumstances where the solicitor was not entitled to the money.
- 10.6 The said transfer constituted misappropriation of client funds.
- 10.7 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.

- 10.8 The solicitor repaid the said sum of \$1,028.20 to the client on 26 April 2001 some 6 months after the original transfer from trust.

In the alternative to 10

Particulars — G J Bluett

- 11.1 At all material times the solicitor carried on practice as Chelmer Legal Practice and acted for GJB ('the client') in the transfer of a property to his wife.
- 11.2 At all material times the solicitor employed her husband Tom Partos ('the employee') as a bookkeeper and delegated to him the responsibility for the firm's general trust account and general account bookkeeping including the drawing of cheques on those accounts and the more mechanical aspects of the administration of deceased estates and conveyancing files.
- 11.3 On 16 October, 2000 the solicitor rendered to the client an account for costs and outlays totalling \$1,028.20 and the following day, 17 October 2000, transferred that sum from the client's individual trust ledger account to the firm's general account in payment of that account.
- 11.4 As at 27 October 2000 there was \$2,301.60 standing to the credit of the client's individual trust ledger account.
- 11.5 On or about 27 October 2000 the employee caused the sum of \$1,028.20 to be again transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs.
- 11.6 At the time of the said transfer, the solicitor had not rendered a bill of costs to her client and was not otherwise authorised by law to effect the transfer which constituted a breach of s8 of the *Trust Accounts Act 1973*.
- 11.7 But for the failure of the solicitor to properly supervise the employee the above conduct would not have occurred.
- 11.8 The solicitor repaid the said sum of \$1,028.20 to the client on 26 April 2001 some 6 months after the original transfer from trust.

Findings and Orders:

1. The tribunal finds the charges proved relying on the particulars set out in paragraphs 1, 2, 3, 5, 7, 9 and 11 of the particulars of charge;

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2. The tribunal finds that matters proved in the charge amount to professional misconduct and the tribunal finds the practitioner guilty of professional misconduct;
3. By majority the tribunal orders that the name of Jennifer Mary Cheney be struck off the Roll of Solicitors of the Supreme Court of Queensland;
4. The tribunal further orders that Jennifer Mary Cheney pay the costs of the Queensland Law Society Incorporated including the costs of the clerk and the recorder, such costs to be assessed by Monsour Legal Costs Pty Ltd. The tribunal orders the costs to be paid by Jennifer Mary Cheney include all ancillary applications made to the tribunal and any reserved costs.
5. The tribunal further orders that these findings and orders and the assessment of costs by Monsour Legal Costs Pty Ltd be served on Jennifer Mary Cheney by pre-paid post addressed to 175 Honour Avenue, Chelmer, Queensland.

Reasons:

P. Cooper and I. Vallin-Thorpe

The tribunal, relying on the definition of professional misconduct laid down in the case of *Adamson v Queensland Law Society*, and accepted in the case of *Re Wheeler*, finds that the conduct of the practitioner is consistent with the definition in those cases.

The tribunal notes that the practitioner has not made any restitution in relation to the deficiency.

The tribunal notes the admissions made by the practitioner in her affidavit in Supreme Court proceedings Appeal No. 403/2001.

The tribunal does not accept the explanation of the practitioner as to the reasons for lack of proper supervision.

M. Conroy

I agree with the substantive findings and my dissent relates solely to the issue of penalty.

I find that an appropriate penalty would be that the practitioner be suspended from practice for a period of three years, and that suspension only be lifted upon:

- (a) restitution be made in respect of the deficiency by the practitioner;
- (b) as a condition precedent to the issue of a practising certificate, the practitioner undertake and complete successfully a Practice Management Course as determined by the Queensland Law Society before seeking the issue of a practising certificate; and
- (c) the practitioner only be permitted to seek the issue of a practising certificate at the end of the suspension at an employee level practising certificate, until the Queensland Law Society is satisfied that she is proficient enough to have a full principal's certificate.

My reason for the penalty is that in the material placed before this tribunal the Queensland Law Society accepted that there was no positive act on the part of the practitioner to defraud and/or transfer funds, but what occurred was due to the act of an employee/husband, and the circumstances to that activity had in my view been set out in detail in the affidavit filed in the Supreme Court proceedings, and in my view constitute an explanation, albeit not a sufficient explanation, but a sufficient explanation to justify a suspension rather than the practitioner being struck off the Roll.