

## ***In the Matter of Howard James Charles Cremin***

**Case No:** SC/395  
**Date of Hearing:** 8 July 1997  
**Appearing Before:** Mr GA Murphy – Chairman  
Mr JSP O’Keeffe  
Mr VJ Vandeleur  
**Penalty:** Suspension – eight months

### **Charges**

On 8 July 1997, the Statutory Committee heard charges laid against Howard James Charles Cremin by the Council of the Queensland Law Society by Application dated 6 June 1997.

The practitioner pleaded guilty to the following charges:

1. That during the period August 1995 to November 1996, he failed to keep, operate and conduct his trust account in a proper and professional manner and engaged in or caused or permitted his firm to engage in various and persistent breaches of the *Trust Accounts Act 1973* and the *Trust Accounts Regulations*.

### **Particulars**

- (a) Between January 1996 and November 1996, in breach of Section 6(1) of the *Trust Accounts Act 1973*, he failed to keep or cause to be kept such accounting or other records of all trust moneys and of the disbursement or disposal thereof or dealings therewith as would sufficiently explain the transactions and the true position in regard thereto, or would enable true and fair accounts to be prepared from time to time, and failed to keep those records in such manner as to enable them to be conveniently and properly audited.
- (b) He failed to have his trust account audited for the period ended 31 March 1996, failed to lodge an Audit Report pursuant to Section 16(2) of the *Trust Accounts Act 1973* and failed to lodge an Audit Certificate pursuant to Regulation 5 of the Legal Assistance (General) Regulations 1988.
- (c) In breach of Section 7 of the *Trust Accounts Act 1973*, he failed, or permitted the failure, to pay trust moneys received to his trust bank account on the date of receipt or as soon as reasonably practicable thereafter; or at all; resulting in trust account deficiencies totalling \$7,703.32.

- (d) In breach of Regulation 5(d) of the *Trust Accounts Regulations*, he, before withdrawing moneys from his trust account, failed, or permitted the failure, to ensure that sufficient trust moneys were held on behalf of the client in question and that the amount of the withdrawal from the trust account was no more than the amount of such trust funds held, resulting in trust account deficiencies totalling \$1,143.
  - (e) In breach of Section 8 of the *Trust Accounts Act*, he withdrew or permitted the withdrawal of moneys from the trust account without the client’s authority and for the purposes of making payments not otherwise lawfully permitted by the said section, resulting in trust account deficiencies totalling \$3,364.05.
2. That between January 1996 and November 1996, he:
    - (a) failed to exercise any or any proper supervision over the conduct by his sole employee of her dealings with clients’ trust moneys and the operation of the firm’s trust account;
    - (b) failed to take any or any sufficient steps to give the clients of the firm the benefit of the superintendence of the activities of his employee, which failures caused or contributed to the occurrence of various breaches of the *Trust Accounts Act 1973* and the *Trust Accounts Regulations* and the occurrence of various deficiencies in clients’ trust moneys.
  3. That in breach of Rule 82(3) of the Rules of the Queensland Law Society Incorporated, he failed to furnish sufficient and satisfactory explanations in writing of two matters in respect of which he had been requested to furnish such explanations pursuant to Rule 82(1) of the Rules of the Queensland Law Society.
  4. That in breach of Rule 83(2) of the Rules of the Queensland Law Society Incorporated, he failed to furnish sufficient and satisfactory replies in writing to requests therefor in two matters, which failures continued for periods of fourteen (14) days from his receipt of the notifications given pursuant to Rule 83(1) of the Rules of the Queensland Law Society.

### **Submissions**

The practitioner through his Counsel, submitted that:

1. He had served a period of suspension from 4 November 1996 to 30 June 1997, imposed upon him by the Council of the Queensland Law Society and had already paid a heavy penalty for the matters the subject of the charges.
2. There would be no point in imposing a fine upon him because his financial circumstances were such that he could not pay a fine.

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3. He would give an undertaking that he would not apply for a Principal's Practising Certificate before 1 July 1999.
  4. He would give a further undertaking that he would complete a Practice Management Course before applying for a Principal's Practising Certificate.

### **Findings & Orders**

The Committee found the facts set out in the charges proved and found the practitioner guilty of professional misconduct.

The Committee noted that as the result of a resolution of the Council of the Queensland Law Society Incorporated, the practitioner had served a period of suspension from 4 November 1996 to 30 June 1997 in relation to the matters that were the subject of the charges before the Committee and ordered that the practitioner not be subject to a further period of suspension in view of his undertaking not to apply for a Principal's Practising Certificate before 1 July 1999 and his further undertaking to complete a Practice Management Course before applying for a Principal's Practising Certificate.

The Committee also ordered that the practitioner pay the Society's costs, the costs of the shorthand writers and the costs of the Clerk to the Statutory Committee.

The Committee observed that it would have suspended the practitioner if not for the fact that he had served a period of suspension from 4 November 1996 to 30 June 1997.