

# In the Matter of Lloyd John Croaker

**Case Number:** SCT/108  
**Date of Hearing:** 15 December 2003  
**Appearing Before:** Mr P Mullins (Presiding Member/Practitioner Member)  
Mr M Conroy (Practitioner Member)  
Ms I Vallin-Thorpe (Lay Member)  
**In Attendance:** Mr J W Broadley (Clerk)  
**Penalty:** Struck off

## Charges

### 1. Misappropriation

The Practitioner fraudulently misappropriated \$38,006.00 of client trust funds in the period from 30 August 2002 to 6 September 2002 by transferring that sum of money to his general account in seven (7) transactions.

#### Particulars

- (a) On 9 September 2002 the Queensland Law Society Incorporated ("the Society") was appointed as Receiver of the trust property of the Practitioner practising under the firm name of TPL at Lutwyche.
- (b) Commencing on 9 September 2002 the Society conducted an examination of the Practitioner's trust records pursuant to s31 of the *Queensland Law Society Act 1952* (as amended) ("the Law Society Act"). The accountant appointed for the purpose of the examination was MK Lowe of the Society's Audit Department ("the auditor").
- (c) As at the date the Society was appointed as Receiver, the trust account had been fully reconciled to 31 July 2002.
- (d) With the assistance of the Bookkeeper and remaining staff of the legal firm the accounting records of the Practitioner were brought up to date by posting presented cheques that had appeared on the bank statements. The auditor was unable to construct a list of outstanding cheques after cheque number 1200 which is the cheque number which starts the trust account cheque book in possession of the Practitioner.
- (e) The Auditor was informed that the Practitioner was in possession of a current trust account cheque book in the weeks leading up to the receivership. This cheque book has not been recovered.
- (f) As a result of the s31 audit, it was established that the Trust bank account has a deficiency of \$76,471.15. A summary of the transactions which constitute the Trust bank account deficiency is set out in the following table:

Date	Cheque No.	Recipient	Amount
07/09/02	1157	Error on cheque	\$0.04
30/08/02	Direct transfer	General account	\$2,200.00
30/08/02	1254	General account	\$4,870.00
02/09/02	1255	General account	\$7,600.00
03/09/02	1256	General account	\$2,800.00
05/09/02	1259	General account	\$2,230.00
05/09/02	1260	General account	\$7,200.00
06/09/02	1262	General account	\$11,106.00
09/09/02	1268	Bank cheque in favour of SJAB	\$38,465.11
<b>Total</b>			<b>\$76,471.15</b>

- (g) Of that deficiency, funds totalling \$38,006.00 were disbursed from the Trust Account and deposited to the Practitioner's General Account as follows:

Date	Cheque No.	Amount
30/08/2002	Direct transfer	\$2,200.00
30/08/2002	1254	\$4,870.00
02/09/2002	1255	\$7,600.00
03/09/2002	1256	\$2,800.00
05/09/2002	1259	\$2,230.00
05/09/2002	1260	\$7,200.00
06/09/2002	1262	\$11,106.00
<b>Total</b>		<b>\$38,006.00</b>

- (h) The said monies could not be attributed against any particular trust ledger account and the Practitioner was not authorised to make those payments.
- (i) In a telephone conversation with Glenn Forster of the Society on 16 September 2002 the Practitioner advised that he did not know the whereabouts of the Trust Account cheque book and the Practitioner said that he could not recall details of the nine (9) cheques for which further information was required.
- (j) On 16 September 2002 the Society wrote to the Practitioner requesting him to advise the reason the above funds had been disbursed.

- (k) On 27 September 2002 a further letter was sent to the Practitioner asking him to reply to the issues raised in the letter dated 16 September 2002. The Society has not received a response to either letter.
- (l) As at the time of the s31 Audit the Practitioner's General Account balance was \$21.50 in debit.
- (m) The deficiency in the trust account of the said sum of \$38,006.00 has not been recovered or repaid.

### 3. Misappropriation

The Practitioner fraudulently misappropriated the sum of \$38,465.11 from client trust funds on 9 September 2002 when the Practitioner drew trust account cheque number 1268 to purchase a bank cheque for \$38,465.11 in favour of SJAB when those funds were not held in trust for that person.

#### Particulars

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- (c) As at the date the Society was appointed as Receiver, the trust account had been fully reconciled to 31 July 2002.
- (d) With the assistance of the Bookkeeper and remaining staff of the legal firm the accounting records of the Practitioner were brought up to date by posting presented cheques that had appeared on the bank statements. The auditor was unable to construct a list of outstanding cheques after cheque number 1200 which is the cheque number which starts the trust account cheque book in possession of the Practitioner.
- (e) The auditor was informed that the Practitioner was in possession of a current trust account cheque book in the weeks leading up to the receivership. This cheque book has not been recovered.
- (f) As a result of the s31 audit, it was established that the Trust bank account has a deficiency of \$76,471.15. A summary of the transactions which constitute the Trust bank account deficiency is set out in the following table:

Date	Cheque No.	Recipient	Amount
07/09/02	1157	Error on cheque	\$0.04
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05/09/02	1260	General account	\$7,200.00
06/09/02	1262	General account	\$11,106.00
09/09/02	1268	Bank cheque in favour of SJAB	\$38,465.11
<b>Total</b>			<b>\$76,471.15</b>

- (g) On the morning of 9 September 2002 the Practitioner drew a Trust Account cheque number 1268 to purchase a bank cheque for \$38,465.11 in favour of SJAB. The payment of the cheque was not authorised.
- (h) At 10.00am on 9 September 2002 a bank cheque in favour of SJAB was issued by the National Australia Bank, Palm Beach Branch, prior to a stop being put on the account. The cheque to cover the bank cheque was written by the Practitioner.
- (i) On 16 September 2002 Glenn Forster of the Society was advised by the Practitioner over the telephone that the Practitioner did not know who SJAB is or why he disbursed the funds to SJAB.
- (j) On 16 September 2002 the Society wrote to the Practitioner requesting him to advise the reason the above funds had been disbursed.
- (k) On 27 September 2002 a further letter was sent to the Practitioner asking him to reply to the issues raised in the letter dated 16 September 2002. The Society has not received a response to either letter.
- (l) The deficiency in the trust account of the said sum of \$38,465.11 has not been recovered or repaid.

### 5. Misappropriation

On or about 25 March 2002 when acting for DPPL in respect of a sale to JPHP the Solicitor fraudulently misappropriated \$10,725.00 of client funds.

#### Particulars

- (a) On 9 September 2002 the Queensland Law Society Incorporated ("the Society") was appointed as Receiver of the trust property of the Practitioner practising under the firm name of TPL at Lutwyche.
- (b) Commencing on 9 September 2002 the Society conducted an examination of the Practitioner's trust records pursuant to s31 of the *Queensland Law Society Act 1952* (as amended) ("the Law Society Act"). The accountant appointed for the purpose of the examination was MK Lowe of the Society's Audit Department ("the auditor").
- (c) As at the date the Society was appointed as Receiver, the trust account had been fully reconciled to 31 July 2002.

- (d) On 12 March 2002 the Practitioner received \$20,000.00 into his Trust Account from his client, DPPL.
- (e) On 12 March 2002 the Practitioner transferred the sum of \$20,000.00 from his trust account to his general account in payment of his tax invoice of the same date for the amount of \$20,000.00.
- (f) Included as an outlay in that invoice was stamp duty on a transfer from the body corporate to DPPL of common property in the amount of \$10,725.00.
- (g) The Practitioner's general accounting records show that a general account cheque number 01173 was drawn in favour of the Office of State Revenue for \$10,725.00 on 12 March 2002. This cheque was presented on 26 March 2002.
- (h) On 24 September 2002 the Office of State Revenue advised the Society that they had not received the stamp duty of \$10,725.00 from TPL on behalf of DPPL.
- (i) Subsequently, the Society obtained from National Australia Bank a copy of general account cheque 01173 which is dated 25 March 2002 and drawn in favour of "Cash" for \$10,725.00. The signature on the cheque appears to be the Practitioner's signature. The cheque was cashed by the Practitioner.

## 6. Receiving Trust Moneys into General Account

On 30 May 2002 when acting for RH in respect of a Hope Island property dispute the Practitioner in breach of s7 of the *Trust Accounts Act 1973* failed to deposit \$952.00 of trust moneys into his client's individual trust ledger account instead incorrectly receiving that amount into the Practitioner's general account.

### Particulars

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- (b) Commencing on 9 September 2002 the Society conducted an examination of the Practitioner's trust records pursuant to s31 of the *Queensland Law Society Act 1952* (as amended) ("the Law Society Act"). The accountant appointed for the purpose of the examination was MK Lowe of the Society's Audit Department ("the auditor").
- (c) As at the date the Society was appointed as Receiver, the trust account had been fully reconciled to 31 July 2002.
- (d) The Practitioner acted for RH in respect of a dispute over property at Hope Island file number 192/02.
- (e) On 8 February 2002, funds of \$500.00 were received into the Practitioner's trust account for fees.
- (f) On 11 April 2002, trust funds of \$330.00 were paid to APS for barrister fees.
- (g) On 28 May 2002, trust funds of \$122.00 were paid to APS for barrister fees, resulting in the trust ledger account recording a credit balance of \$48.00.
- (h) On 30 May 2002 the amount of \$1,853.00 was received into the Practitioner's general account from KAH & PAH in payment of a tax invoice for the same amount.
- (i) The Practitioner was entitled to the amount of \$901.00 comprised of professional fees of \$890.00 plus \$11.00 postage and telephone charges.
- (j) The Practitioner's tax invoice states that funds of \$1,000.00 were to be retained in trust for anticipated costs and outlays.
- (k) Therefore trust monies of \$952.00 were incorrectly received into the Practitioner's general account, in breach of s7 of the *Trust Accounts Act 1973*.

### Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr I R Foote, Solicitor of the Queensland Law Society Incorporated
- (b) For the Practitioner:  
Nil

### Findings and Orders

1. The Tribunal gave leave to the Applicant to amend charge 1 by deleting "30 August 2002" and inserting "29 August 2002" and dispensing with any requirement to re-serve the Notice of Charge upon the Respondent.
2. The Tribunal finds charges 1, 3, 5 and 6 proved and that those matters constitute professional misconduct.
3. The Tribunal finds the Practitioner guilty of professional misconduct.
4. The Tribunal orders that the name of the Practitioner be struck from the Roll of Solicitors of the Supreme Court of Queensland.
5. The Tribunal further orders that the Respondent pay the costs of the Queensland Law Society Incorporated of and incidental to this application, including reserved costs and the costs of the recorder and of the Clerk, such costs to be assessed by Monsour Legal Costs Pty Ltd.

## Reasons

The practitioner is charged with three charges of misappropriation of client trust moneys in sums of \$38,006, \$38,465.11, and \$10,725.

The fourth charge is of receipt into his general account of \$952 of client trust moneys, contrary to his duty to pay those moneys to his trust account.

The practitioner has received the Notice of Charge and has written to the Tribunal indicating that he does not contest the charges. He did not appear before us today.

The material before us establishes on the *Brigginsshaw* test that the charges are proven.

We have considered carefully the submissions made by the Queensland Law Society and the three authorities to which we were referred by the Society. We have also considered the practitioner's candid but sad explanation as set out in his fax of 15 December 2003, addressed to Mr Ian Foote of the Queensland Law Society, which is contained in Exhibit A to Mr Foote's affidavit of 15 December 2003.

It appears to us that the practitioner has a drug habit and he has used the trust moneys to fund that habit. Where deliberate misappropriation has occurred, the authorities are clear. There must be a striking off order made.

The practitioner's conduct was dishonest and his drug habit does not excuse or justify his professional misconduct. Any misappropriation must be dealt with severely, as the public must be protected from dishonest practitioners who bring the whole of the profession into disrepute.

It is important for us to send a clear message to the profession that deliberate misappropriation will result in the practitioner's name being struck from the roll.

We note that there is no application for statutory compensation.

We want to make a final comment, and it's this, that the Queensland Law Society material disclosed that the National Australia Bank, the practitioner's bank, facilitated a direct transfer of funds to the practitioner's general account from his trust account, which *prima facie* appears to be in breach of the *Trust Accounts Act*.

It is to be hoped that all banking institutions which conduct solicitors' trust accounts are aware of the provisions of the *Trust Accounts Act* and take appropriate steps to ensure compliance with same.