

In the Matter of Gary Cummings

Case Number: SCT/115
Date of Hearing: 21 October 2003
Appearing Before: Mr P Cooper (Presiding Member/Practitioner Member)
Mr M Byrom (Practitioner Member)
Dr J Lamont (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Suspended from practice for twelve months effective from 21 October 2003 and fined \$2,000

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, failed, for the financial period ending 31 March 2001, to comply with his obligations as trustee with respect to the audit of his trust account.

Particulars

- (a) At all times material to each of the charges the subject of this Notice of Charge, the practitioner was the trustee and sole signatory of the trust bank account of GC trading as KRGL&C conducted at the Southport branch of the Bank of Queensland.
 - (b) The practitioner was 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, for the financial period ending 31 March 2001, the practitioner failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates.
 - (d) The audit report and audit certificate for the financial period ended 31 March 2001 were lodged on 15 March 2002.
2. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, during the period April 2001 to February 2002 failed, in breach of his duty as a solicitor, and in breach of the requirements of s12 of the *Trust Accounts Regulation* 1999, to undertake monthly reconciliations of his trust account.

Particulars

- (a) During the period April 2001 to January 2002 monthly trust account reconciliations were not undertaken as soon as practicable after the end of each month:

Schedule

Month	Date Trust Reconciliation Completed	Period of Delay (approx)
April 2001	14 June 2001	1.5 months
May 2001	21 June 2001	2 weeks
June 2001	14 November 2001	4.5 months
July 2001	19 November 2001	3.5 months
August 2001	22 November 2001	2 months, 3 weeks
September 2001	28 November 2001	2 months
October 2001	13 December 2001	1.5 months
November 2001	15 January 2002	1.5 months
December 2001	5 February 2002	1 month
January 2002	20 February 2002	2 weeks

- (b) For the period May 2001 to February 2002, listings of month end trust ledger balances were not printed and retained with the monthly trust reconciliations as part of the trust records.
- (c) For the period April 2001 to October 2001, monthly trust cash books were not printed and retained with the monthly trust reconciliations as part of the trust records.
- (d) For the period November 2001 to January 2002, the trust account cashbook balance, whilst reconciled with the listings of month end trust ledger balances, was not reconciled and balanced at month end with the trust bank account.

3. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, during the period from May 2001 to January 2002 dealt with clients' trust moneys in breach of the terms of the trust and in breach of s7 and s8 of the *Trust Accounts Act*, by, without authority or any other lawful entitlement, causing or permitting the said trust property to be intermingled with the general account. The said breaches resulted, as at January 2002, in a trust deficiency of \$2,720.

Particulars

- (a) At the times and in the amounts particularised in the Schedule hereunder, the practitioner received clients' trust funds totalling \$2,720, which trust funds were receipted to the credit of the trust account, but deposited directly to the general account.
- (b) The said moneys were received into the general account in breach of s7 of the *Trust Accounts Act*, and without the practitioner having authority or any other lawful entitlement to deposit the same to the general account.
- (c) Further, at the times and in the amounts particularised in the Schedule hereunder, the practitioner caused or permitted the said sum of \$2,720 to be transferred from the trust account to the general account, in payment of costs and outlays, in circumstances where the practitioner held no trust funds for the matters in respect of which the said payments were made.
- (d) The said moneys were paid from the trust account to the general account in breach of s8(1) of the *Trust Accounts Act* and without the practitioner having any authority or any other lawful entitlement to pay the same to the general account.
- (e) As a consequence of the aforementioned breaches, as at January 2002 there was a trust deficiency of \$2,720, the said trust moneys having been unlawfully intermingled with the general account and applied, or available to be applied for general purposes.
- (f) On or about 26 September 2002, the sum of \$920 was paid by MB, Solicitor, in partial restoration of the trust deficiency. The balance trust deficiency of \$1,800 has not been restored.

Schedule

Matter	Date of Direct Deposit to General Account	Trust Account Receipt No. Issued	Amount	Date of Trust Transfer to General Account	Purpose of Trust Transfer
K	1 May 2001	75721	230.00	25 May 2001	Costs and outlays
B1	18 May 2001	75774	230.00	25 May 2001	Costs and outlays
G	25 May 2001	75811	230.00	1 June 2001	Costs and outlays
B2	3 August 2001	76080	230.00	4 January 2002	Costs and outlays
B3	3 August 2001	76081	230.00	4 January 2002	Costs and outlays
H	19 September 2001	82324	230.00	21 September 2001	Costs and outlays
D	28 September 2001	82356	230.00	4 January 2002	Costs and outlays
K	19 October 2001	82435	230.00	4 January 2002	Costs and outlays
C	31 October 2001	82485	880.00	2 November 2001 5 November 2001	Costs and outlays (\$230.00) Stamp Duty (\$650.00)
			\$2,720.00		

4. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, during the period from January 2001 to April 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 certain matters, in circumstances where the amount of the withdrawal or the payment was more than the amount of cleared funds held in the trust account for such matters, as particularised in the Schedule hereunder. The said breaches resulted, as at April 2002, in a trust deficiency of \$19,575.80.

Particulars

- (a)

No.	Matter	Amount Overdrawn	Date Overdrawn	Beneficiary of Trust Overdraw (general account or third party)
1.	N	682.32	7 January 2002	Third party
2.	B1	0.50	29 March 2001	Third party
3.	A1	516.45	2 April 2001	General account
4.	G1	0.91	19 April 2001	General account
5.	M1	20.00	23 May 2001	Third party
6.	F1	250.00	25 May 2001	General account
7.	M2	30.00	25 May 2001	General account
8.	L1	250.00	1 June 2001	General account
9.	K	230.00	15 June 2001	General account
10.	S1	230.00	15 June 2001	General account
11.	T1	230.00	15 June 2001	General account
12.	M3	210.00	15 June 2001	General account
13.	D1	109.81	18 June 2001	Third party
14.	B2	0.03	18 June 2001	General account
15.	H1	230.00	18 June 2001	General account
16.	G2	100.00	20 June 2001	Third party
17.	B3	230.00	27 June 2001	General account

18.	MF	760.91	4 July 2001	General account (\$1,870.91)
		increasing to 848.91	6 July 2001	
		increasing to 1,958.91	11 July 2001	Third Party (\$88.00)
19.	L2	230.00	6 July 2001	Third party
20.	S2	36.00	6 July 2001	General account
21.	B4	8.00	16 July 2001	Third party
22.	Q	250.00	20 July 2001	General account
23.	B5	230.00	14 August 2001	General account (\$230.00)
		increased to 390.00	7 September 2001	Third party (\$160.00)
24.	A2	230.00	20 August 2001	General account
25.	F2	230.00	21 August 2001	General account
26.	I	30.00	24 August 2001	General account
27.	M4	0.01	27 August 2001	Third party
28.	M5	230.00	30 August 2001	General account
29.	W1	230.00	5 September 2001	General account
30.	C1	230.00	7 September 2001	General account
31.	MI	220.00	19 September 2001	General account (\$118.60)
				Third Party (\$101.40)
32.	S3	30.00	24 September 2001	General account (\$30.00)
		Increased to 1,929.15	8 October 2001	Third parties (\$1,899.15)
33.	J1	450.00	12 October 2001	General account (\$431.90)
		reduced to Nil	11 March 2002	Third party (\$18.10)
34.	C2	230.00	23 October 2001	General account
35.	C3	230.00	23 October 2001	General account
36.	P1	230.02	26 October 2001	Third party
37.	R1	20.00	31 October 2001	Third party
38.	R2	0.04	1 November 2001	General account
39.	B6	80.00	2 November 2001	Third party
40.	C4	230.00	5 November 2001	Third party
41.	H2	0.01	16 November 2001	General account
42.	A3	135.00	21 November 2001	Third party
43.	C5	18.00	23 November 2001	Third party
44.	P2	10.00	23 November 2001	General account
45.	P3	0.80	28 November 2001	General account
46.	H3	38.30	28 November 2001	General account (\$191.70)
		increased to 230.00	31 January 2002	Third party (\$38.30)
47.	TFPL	0.05	30 November 2001	General account
48.	D2	0.01	30 November 2001	General account
49.	O1	15.00	5 December 2001	General account
50.	A4	230.00	7 December 2001	Third party
51.	W2	0.02	19 December 2001	General account
52.	D3	230.00	4 January 2002	General account
53.	B7	230.00	4 January 2002	General account
54.	W3	200.00	4 January 2002	General account
55.	D4	230.00	4 January 2002	General account
56.	B8	230.00	4 January 2002	General account
57.	J2	230.00	4 January 2002	General account
58.	FE	230.00	4 January 2002	General account
59.	E	140.00	8 January 2002	General account (\$80.00)
				Third party (\$60.00)
60.	S4	0.02	9 January 2002	General account
61.	T2	81.67	11 January 2002	Third party
62.	W4	270.02	11 January 2002	Third party
		increased to 336.02	20 February 2002	
63.	T3	0.50	14 January 2002	General account
64.	Z	181.60	14 January 2002	Third party
		increased to 402.90	15 January 2002	
65.	T4	19.25	16 January 2002	Third party
66.	D5	0.03	18 January 2002	General account
67.	M6	1,035.00	21 January 2002	Third party
68.	H4	92.50	22 January 2002	Third party
69.	O2	40.00	22 January 2002	Third party
70.	L3	20.00	1 February 2002	General account
71.	B6	0.05	4 February 2002	General account
72.	Bank charges and debits	232.05	Various – September 2001 to April 2002	General account

73.	F3	45.38	4 March 2002	Third party
74.	P4	0.50	8 March 2002	General account
75.	U	32.89	30 March 2002	Unknown
76.	P5	905.00	9 April 2002	Third party
77.	R3	1,000.00	15 April 2002	Third party
78.	M7	2,431.00	19 April 2002	Third party
\$19,575.80				

- (b) The matters particularised in the Schedule resulted in a trust deficiency as at April 2002 in the sum of \$19,575.80 being trust moneys held by the practitioner for various clients other than those on whose behalf the payments were made, transferred to the general account or paid to the benefit of diverse third parties, in breach of s8(1) of the *Trust Accounts Act* and s10(1) of the *Trust Accounts Regulation* 1999;
- (c) The payments from the trust account as particularised in items 1-78 of the Schedule were made without the practitioner having any authority or any other lawful entitlement, and were thereby unlawfully applied by the practitioner variously to the use and benefit of the general account, or to the use and benefit of diverse third parties, until such time as the trust deficiency comprising the said payments was restored.
- (d) Since April 2002 the said trust deficiency has been restored to the extent of \$5,903.11 comprising:
- (i) \$1,437.90 on 24 September 2002 being moneys recouped from the clients M6 (item 67) and Z (item 64) by MB, Solicitor, and paid to the credit of the trust account; and
 - (ii) \$4,465.21 on 24 September 2002 by MB, Solicitor, paid to the credit of the trust account.
- (e) The balance trust deficiency of \$13,672.69 has not been restored.
5. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, between November 2001 and January 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 s15 of the *Trust Accounts Regulation* 1999 by wrongfully drawing against, or causing payments to be made, from the trust account for costs and outlays, in circumstances where the payments have not been posted to the trust ledger account for the person on whose behalf the moneys were paid, and in circumstances where the practitioner is unable to identify the person on whose behalf the trust moneys were paid, as particularised in the schedule hereunder. The said payments resulted, as at January 2002, in a trust deficiency of \$4,421.92.

Particulars

(a)

No.	Matter	Amount	Date	Beneficiary of Trust Payment
1.	Multiple costs and outlays transfer	680.00	2 November 2001	General account
2.	Multiple costs and outlays transfer	3,741.92	4 January 2002	General account
		\$4,421.92		

- (b) The matters particularised in the schedule resulted in a trust deficiency as at January 2002 in the sum of \$4,421.92, being trust moneys held by the practitioner for various unidentified clients and transferred to the general account for costs and outlays, which transfers had not been allocated to any specific client trust ledgers, and in respect of which the practitioner was unable to identify the relevant trust ledger. The said transfers were made in breach of s8(1) of the *Trust Accounts Act* and in breach of s15 of the *Trust Accounts Regulation* 1999.
- (c) The said trust deficiency of \$4,421.92 has not been restored, or otherwise accounted for.
6. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of 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 unlawful entitlement, depositing or permitting the depositing of the said trust moneys to the credit of the general account.

Particulars

- (a) (i) On 3 October 2001 the practitioner received the sum of \$764.06 directly into the general account from his client C, which amount included trust moneys in the sum of \$90.80 on account of unpaid registration fees.
- (ii) The said sum of \$90.80 was deposited into the general account in breach of s7 of the *Trust Accounts Act* and without the practitioner having any lawful entitlement or authority to so deposit it.
- (iii) The trust deficiency of \$90.80 was restored on 18 October 2001 when transfer fees of \$90.80 were paid from the general account.
- (b) (i) On 6 November 2001 the practitioner received the sum of \$581.71 directly into the general account from his client Cc for costs and outlays, in circumstances where no bill of costs had been rendered to the client in respect of the said payment.
- (ii) The said sum of \$581.71 was deposited into the general account in breach of s7 of the *Trust Accounts Act* and without the practitioner having any lawful entitlement or authority to so deposit it.
- (iii) The costs deficiency of \$581.71 has not been regularised.

- (c) (i) On 19 December 2001 the practitioner received the sum of \$2,251 directly into the general account, being party and party costs and outlays recovered on behalf of his client M6, which amount included trust moneys in the sum of \$2,108, being \$1,203 on account of costs, \$650 on account of medical fees and \$255 on account of Counsel's fees.
 - (ii) As at 19 December 2001, no bills of costs had been rendered to the client, Counsel's fees had not been paid and medical fees of \$650 had been paid from trust on 1 June 1999 from client funds provided;
 - (iii) The said sum of \$2,108 was thereby deposited into the general account in breach of s7 of the *Trust Accounts Act* and without the practitioner having any lawful entitlement or authority to so deposit it;
 - (iv) The costs deficiency of \$1,203 has not been regularised and the balance trust deficiency of \$905 has not been restored.
7. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of 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 other lawful entitlement, paying the said trust moneys from the trust account to the credit of the general account.

Particulars

- (a) (i) On 6 September 2001 the practitioner withdrew the sum of \$581.15 the property of his client Br from the trust account to the general account for costs and outlays, which sum included an amount of \$160 held in trust on account of unpaid registration fees.
- (ii) The said payment, as to the sum of \$160, was made without any lawful authority or entitlement and in breach of s8 of the *Trust Accounts Act*. The trust deficiency of \$160 has not been restored, although on 7 September 2001 the practitioner drew the sum of \$160 from the trust account (in breach of s8(1) of the *Trust Accounts Act* and s10(1) of the *Trust Accounts Regulation* 1999 – see charge 4) in payment of the balance registration fee.
- (b) (i) On 23 October 2001 the practitioner withdrew the sum of \$1,035 the property of his client M6, and held in trust on account of Counsel's fees, from the trust account to the general account.
- (ii) The said payment was made without any lawful authority or entitlement and in breach of s8 of the *Trust Accounts Act*. As at the time of the Society's examination of the practitioner's accounts in March 2002, Counsel's fees totalling \$1,035 remained to be paid. The trust deficiency of \$1,035 has not been restored.
- (c) (i) On 4 January 2002 the practitioner withdrew the sum of \$230 from the trust account to the general account. The said sum of \$230 had been received by the practitioner from this client Br on 14 August 2001 on account of costs and outlays, but incorrectly credited to the trust ledger account of the practitioner's client, Ce.
- (ii) On 14 August 2001 the practitioner had transferred the sum of \$230 from the trust ledger of his client Br to his general account for costs and outlays, in breach of s10(1) of the *Trust Accounts Regulation* 1999 (see charge 4), thereby overdrawing the Br trust ledger by \$230.
- (iii) The said credit balance of \$230 in the Ce trust ledger should have been transferred by the practitioner to the Br trust ledger to restore the trust deficiency created in that ledger on 14 August 2001.
- (iv) As at 4 January 2002 no costs were payable and no outlays had been paid in connection with the matter of Ce.
- (v) The said payment of trust funds of \$230 to the general account on 4 January 2002 was made without any lawful authority or entitlement, and in breach of s8 of the *Trust Accounts Act*. The said trust deficiency of \$230 has not been restored.
- (d) (i) On 11 January 2002 the practitioner withdrew the sum of \$586.96 the property of his client Th from the trust account to the general account for costs and outlays.
- (ii) The said sum comprised costs and outlays of \$478.16, in respect of which no bill of costs had been rendered by the practitioner to his client, and an amount of \$90.80 being an overpayment by the client on account of anticipated registration fees, refundable to the client.
- (iii) The said payment was made without any lawful authority or entitlement and in breach of s8 of the *Trust Accounts Act*. The said costs deficiency of \$478.16 has not been regularised and the balance trust deficiency of \$90.80 has not been restored.

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 property has, during the period April 2001 to February 2002 failed to keep, operate and conduct his trust account in a proper and professional manner, and has engaged, in the various respects particularised hereunder, in breaches of the *Trust Accounts Act* 1973 and the *Trust Accounts Regulation* 1999.

Particulars

- (a) (i) In some ten instances during the period May 2001 to January 2002, as particularised in the Schedule hereunder, trust account cheques or direct debits totalling some \$420,145.83 were drawn prior to the receipting and depositing of trust funds, in breach of s10(1) of the *Trust Accounts Regulation* 1999.

Schedule

No.	Matter	Funds Received/Deposited	Amount	Trust Cheque drawn/paid
1.	B1	16 May 2001	2,270.65	15 May 2001 – \$1,340.00 (bank cheque by direct debit) 15 May 2001 (paid 16 May 2001) – \$930.65
2.	V	21 May 2001	4,107.51	18 May 2001 (and paid) – \$55.00 18 May 2001 (paid 21 May 2001) – \$4,052.51
3.	B2	16 July 2001	15,981.57	13 July 2001 (and paid) – \$15,989.57
4.	C1	30 July 2001	150.00	27 July 2001 – \$150.00
5.	M	27 August 2001	3,584.90	24 August 2001 (and paid) – \$3,584.91
6.	S1	31 October 2001	35,018.48	30 October 2001 (and paid) – \$34,988.75
7.	B3	2 November 2001	44,183.68	31 October 2001 (and paid) – \$339.63 31 October 2001 (paid 2 November 2001) – \$609.71
8.	B4	8 January 2002	265,751.60	7 January 2002 – \$260,461.97 (bank cheques obtained by direct debit)
9.	C2	8 January 2002	95,344.48	7 January 2002 – \$95,344.48 (bank cheques obtained 7 January 2002 by direct debit)
10.	S2	14 January 2002	6,817.02	10 January 2002 (and paid) – \$2,298.65

- (i) Of the trust account cheques and direct debits referred in paragraph 8(a)(i), payments totalling some \$414,552.96 were debited to the trust account prior to the deposit of the trust funds, resulting, over the course of the said period, in a total trust deficiency of \$414,552.96, which deficiency was restored upon receipt of the clients' trust funds. The payments comprising the sum of \$414,552.96 were made in breach of s8(1) of the *Trust Accounts Act* and s10(1) of the *Trust Accounts Regulation* in that, at the time of each such payment, the practitioner held no trust funds for the client on whose account the trust payment was made, with the consequence that trust funds held by the practitioner on behalf of other clients were unlawfully applied in making the said payments.
- (ii) The balance trust cheques totalling some \$5,592.87 drawn prior to the deposit of trust funds were paid either on the day of or subsequent to the date of such deposit.
- (b) In some 19 instances during the period April 2001 to February 2002, as particularised in the Schedule hereunder, trust account cheques were drawn prior to the issuing of trust account receipts for funds deposited to the trust bank account (and in 7 instances drawn prior to the actual banking of the said trust funds in breach of s10(1) of the *Trust Accounts Regulation*) with the consequence that the particular trust ledgers were overdrawn until such time as the trust receipt was recorded in the trust ledger.

Schedule

No.	Receipt	Funds Banked	Date Funds Banked	Date Receipt Issued	Date Trust Cheques Drawn
1.	75717	166,095.71	23 April 2001	30 April 2001	23 April 2001
2.	75782	122,614.41	17 May 2001	21 May 2001	18 May 2001
3.	76076	150,000.00	25 July 2001	3 August 2001	2 August 2001
		140,000.00	27 July 2001		
4.*	76070	169,282.11	1 August 2001	2 August 2001	31 July 2001
5.	82187	2,262.40	10 August 2001	23 August 2001	10 August 2001
6.	82134	107,549.80	13 August 2001	14 August 2001	13 August 2001
7.	82184	113,997.09	17 August 2001	23 August 2001	17 August 2001
8.	82185	209,812.98	17 August 2001	23 August 2001	17 August 2001
9.	82251	116,488.05	3 September 2001	5 September 2001	4 September 2001
10.	82368	4,775.00	24 September 2001	2 October 2001	24 September 2001
11.*	82497	68,500.51	2 November 2001	2 November 2001	1 November 2001 (paid 2 November 2001)
12.*	82607	169,097.79	30 November 2001	30 November 2001	29 November 2001 (paid 30 November 2001)
13.	82625	117,524.91	5 December 2001	6 December 2001	5 December 2001
14.	97830	108,712.56	7 January 2002	8 January 2002	7 January 2002
15.*	97841	38,033.80	9 January 2002	9 January 2002	8 January 2002 (paid 9 January 2002)
16.	97937	561,835.06	6 February 2002	7 February 2002	6 February 2002 (paid 7 February 2002)
17.*	97858	2,675.00	13 February 2002	13 February 2002	12 February 2002 (unpresented 28 February 2002)
18.*	97960	453.41	13 February 2002	13 February 2002	12 February 2002 (paid 13 February 2002)
19.*	97961	304.71	13 February 2002	13 February 2002	12 February 2002 (paid 13 February 2002)

* Trust account cheque drawn prior to banking of trust funds.

- (c)
 - (i) In some 108 instances during the period April 2001 to February 2002, as particularised in the affidavit of Grenville Rex Hughes filed in these proceedings, no trust account receipts were issued for trust funds comprising some \$10 million deposited to the trust bank account;
 - (ii) trust account receipts no. 098020 and 098021 were issued on or after 1 March 2002 in respect of trust funds received by telegraphic transfer on 27 February 2002, and backdated to 27 February 2002;
 - (iii) issued trust receipts during the period April 2001 to February 2002 did not, in all instances, record client matter descriptions, in breach of s5(1)(e) of the *Trust Accounts Regulation* 1999.
- (d) In some 22 instances during the period May 2001 to January 2002 as particularised in the affidavit of Grenville Rex Hughes filed in these proceedings, the practitioner caused payments to be made from the trust account by direct debit to the trust bank account, without the issue of a trust account cheque, in breach of s12(1) of the *Trust Accounts Act*.
- (e) Throughout the period April 2001 to February 2002 the practitioner's trust records were maintained such that:
 - (i) in breach of s14(2) of the *Trust Accounts Regulation* 1999, trust ledger accounts did not disclose the balance of the account after each entry (receipt or payment);
 - (ii) in breach of s11(1)(b) of the *Trust Account Regulation* 1999, the trust account cash book did not detail, by disclosure of individual client matter trust ledger accounts, the apportionment of trust cheques drawn for the payment of multiple costs and outlays, such cheques being recorded in the cash book disclosing only the total amounts drawn; and
 - (iii) in breach of s14(2) of the *Trust Accounts Regulation* 1999, details of trust cheques drawn for the payment of multiple costs and outlays were not properly apportioned and entered in each trust ledger account applicable to such payment.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr R G Perrett, Solicitor of Messrs Clayton Utz Solicitors
- (b) For the Practitioner:
Mr J A Griffin QC instructed by Messrs Cranston McEachern Solicitors

Findings and Orders

1. The Tribunal notes that the Practitioner has pleaded guilty to the eight charges and finds the charges proved and that they amount to professional misconduct.
2. The Tribunal finds the Practitioner guilty of professional misconduct.
3. The Tribunal accepts the undertaking given by the Practitioner that he will not seek a principal level practising certificate.
4. The Tribunal further accepts the undertaking given by the Practitioner that he will restore, in relation to charges 3 and 5, the deficiency of \$19,894.61; and in relation to charges 6 and 7, the deficiency of \$914.13 within twelve months of the date of this hearing.
5. The Tribunal further orders the Practitioner to undertake the Trust Account module of the Practice Management Course prior to the Practitioner seeking an employee level practising certificate.
6. The Tribunal further orders that the Practitioner be suspended from practice for twelve months effective from today.
7. The Tribunal further orders that the Practitioner pay a penalty to the Fund of \$2,000.00 to be paid within twelve months from today.
8. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated, together with the costs of the Clerk and the recorder, to be agreed and, failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

In arriving at its findings, the Tribunal has taken into account the plea of guilty of the practitioner, the fact that the practitioner has co-operated with the Society, that there has been no evidence or allegation of fraud or dishonesty by the practitioner, the evidence given by the practitioner from the witness box, the acceptance by the practitioner of the personal responsibility which has resulted in a saving of time and costs, the submissions made on behalf of the practitioner, and that the practitioner does not appear to have directly benefited from the improper transfer of funds from the Trust Account to the General Account.

There have been substantial numbers of breaches of the *Trust Account Act* and its *Regulations*. The Tribunal accepts the submission made by the Society, but the Tribunal wishes to read into the evidence some of the material, which is as follows:

- the failure to undertake the 2001 Trust Account audit;
- failure to undertake Trust Account reconciliations in a timely or a proper fashion;
- trust monies were improperly received directly into the General Account, which is a breach of s7 of the *Trust Accounts Act*, these dealings resulting in a Trust deficit of \$2,720, which has subsequently been reduced to \$1800;
- a multitude, in fact, 78 of overdrawn Trust Ledgers during the period of March 2001 to April 2002, these overdrawings resulting in a Trust deficiency of \$19,575.80, subsequently reduced to \$13,672.69;
- unallocated transfers of Trust funds to the General Account for costs and outlays;
- the total of unrestored Trust deficiencies, the subject of charges 3 and 5, is \$19,894.61.
- various individual transaction files in respect of which Trust funds were deposited directly into the General Account in breach of s7;
- trust funds were transferred from Trust Account to General Account in breach of s8(1), and there are certain deficiencies evidenced by these transactions which have not been restored or regularised, the total for the deficiencies for the charges 6 and 7 being \$914.13.

Many of the irregularities still remain unexplained.

On the orders that this Tribunal makes, the Tribunal is reasonably satisfied that the practitioner will be a fit and proper person to practise after the period of suspension.