

# In the Matter of Graham Davies

**Case No.** SC/373  
**Date of Hearing:** 28 January 1998  
**Appearing Before:** Mr G A Murphy Chairman,  
Mr G A Fox, Ms C C  
Endicott, Mr N Sartor Lay  
Observer  
**Penalty:** Struck off

## Charges

On January 28, 1998 the Statutory Committee heard charges laid against Graham Davies by the Council of the Queensland Law Society by application dated January 19, 1996. The reason for the delay is that Mr Davies whereabouts were not known and the charges could not be served on him. He suddenly left Australia in November 1994.

The practitioner pleaded guilty to the following charges:

1. On or about May 25, 1993, the practitioner fraudulently converted to the use of himself and his wife the sum of \$3,111.61 which the practitioner held on trust for Client McM as trustee of the estate of T, by paying such sum to the credit of Australian Guarantee Corporation Limited account no. X in the name of himself and his wife.
2. On or about May 25, 1993, the practitioner fraudulently converted to his own use, or to the use of a person unknown, the sum of \$35,000 which the practitioner held on trust for client McM as trustee of the estate of T, by paying such sum to the Deputy Commissioner of Taxation.
3. On or about May 31, 1994, the practitioner fraudulently converted to the use of himself and his wife the sum of \$1,300.00 which he held on trust for McM as trustee of the estate of T, by paying such sum to the credit of Westpac Banking Corporation Account no. X in the name of Mr R to whom the practitioner's wife was indebted and which debt had been guaranteed by the practitioner.
4. On or about May 31, 1994, the practitioner fraudulently converted to his own use the sum of \$5,000 which the practitioner held on trust for his client McM as trustee of the estate of T, by paying such sum to D and Company T in reduction of the practitioner's debt to D and company T.
5. On or about June 30, 1994, the practitioner fraudulently converted to his own use the sum of

\$1,403 which the practitioner held on trust for McM as trustee of the estate of T, by paying such sum to D and company T in reduction of the practitioner's debt to D and company T.

6. On or about June 30, 1994, the practitioner fraudulently converted to his own use the sum of \$3,596.94 which the practitioner held on trust for McM as executor of the estate of W, by paying such sum to another solicitor's trust account on behalf of D & Company T in reduction of the practitioner's debt to D & Company T.
7. On or about September 3, 1993, the practitioner fraudulently converted to the use of himself and his wife, the sum of \$1,500 which the practitioner held on trust for client M, by paying such sum to a firm on behalf of creditor R, to whom the practitioner's wife was indebted and which debt had been guaranteed by the practitioner.
8. On or about August 1, 1994, the practitioner fraudulently converted to his own use the sum of \$5,000 which the practitioner held on trust for client H and Company D, by paying such sum to another solicitor's trust account on behalf of D & Company T in reduction of the practitioner's debt to D & Company T.
9. On or about November 3, 1994, the practitioner stole the sum of \$68,104 from Commonwealth Bank of Australia Limited, alternatively from the trust account of solicitor D, by falsely signing as drawer with the pretended signature of solicitor D a cheque drawn on the said trust account.

## Particulars

- (a) On a date unknown, but prior to November 3, 1994, the practitioner stole from the offices of solicitor D, a cheque form provided by Commonwealth Bank of Australia Limited for use in respect of solicitor D's trust account.
- (b) On or about November 3, 1994, the practitioner utilised the said cheque form which had had completed and falsely signed with the pretended signature of solicitor D as drawer in order to purchase from Commonwealth Bank of Australia a bank cheque in the sum of \$68,104 in favour of Frederick William Mitchell ("Mitchell").
- (c) On or about November 3, 1994, the practitioner deposited the said bank cheque to an account opened by the practitioner in the name of Mitchell, and which account was controlled and operated by the practitioner.

## Hearing

On January 28, 1998 the matter came on for hearing before the Statutory Committee.

Mr B Bartley, Solicitor, of Corrs Chambers Westgarth Solicitors appeared for the Queensland Law Society Incorporated.

The practitioner appeared in person.

The practitioner pleaded guilty to the allegations contained in the Application of the Queensland Law Society Incorporated dated January 19, 1996. No oral evidence was called in respect of the charges.

### Submissions

A SUMMARY OF THE SOCIETY'S SUBMISSION is as follows:

Charges 1 to 8 relate to charges of misappropriation covering a period May 1993 to August 1994 of funds totalling \$55,911.55 to discharge the practitioner's personal liabilities or those of his wife, for which he was personally responsible.

Charge number 9 was committed in November 1994 and related to the theft of funds held not by the practitioner but by another Solicitor.

Mr Davies stole two trust account cheque forms and forged the other practitioner's signature, and one of those cheques was used to purchase from the Commonwealth Bank a Bank Cheque in the sum of \$68,104 made payable to W.S. Mitchell. The practitioner then opened a bank account at the National Australia Bank in the name of Mitchell and in order to open that account he produced a birth certificate and driver's licence in the name of Mitchell. Mr Davies actually received a total of \$19,500. Most of the money has been recovered by the police.

The offences involved a course of dishonest conduct over the period of time, about 18 months, and involved not only misappropriation of substantial funds held by the practitioner on behalf of his client, but also funds held by another practitioner. In some instances the offences were committed by forging various documents and adopting various identities, as was the case in charge 9 and by concocting documents designed to hide the misappropriations.

Mr Davies declined to make a submission.

### Findings and Orders

THE COMMITTEE ORDERED as follows:

The practitioner having pleaded guilty, the Committee finds the facts set out in the Application of the Queensland Law Society Incorporated dated January 19, 1996 proved. The Committee finds that those facts constitute professional misconduct. The Committee finds the practitioner guilty of professional misconduct. The Committee orders the name Graham Davies be struck from the roll of Solicitors for the Supreme Court of Queensland. The Committee further orders that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to this application, the costs of the Clerk to the Statutory Committee and the costs of the shorthand writer to be assessed or taxed and the Committee directs that the Clerk to the Statutory Committee shall be entitled to costs as a Solicitor for perusing documents filed and care and consideration.

## The Queensland Law Society Statutory Committee

# Disciplinary Action Report Court of Appeal

<b>Appellant:</b>	The Queensland Law Society Incorporated
<b>Respondent:</b>	Henry William Smith
<b>Appeal No:</b>	10787 of 1997 (1 December 1997)
<b>Date of Order:</b>	27 April 1998
<b>Penalty:</b>	Struck off, by consent.

This was an appeal against the inadequacy of the penalty imposed by the Statutory Committee on November 11, 1997 (see Bi-Annual Report of Disciplinary Action No. 2 Supplement January 1998 at page 12).

The practitioner had admitted the charge before the Statutory Committee that on April 29, 1996 the practitioner drew four cheques on his Trust Account, totalling \$22,630.08, endorsed them to himself and attempted to

deposit the cheques into his personal cheque account. The Committee found the practitioner guilty of professional misconduct but was satisfied that at the time, the practitioner was suffering from a major depressive illness which was the cause of his misconduct. The Committee was satisfied that under the special circumstances of the case, the name of the practitioner should not be struck from the roll of solicitors, but that he should be suspended from practice until such time as he was able to satisfy the Council of the Queensland Law Society that he was a fit and proper person to hold a Practising Certificate.

### Grounds of Appeal

1. The imposition of a suspension from practice of the practitioner for an indeterminate period was manifestly inadequate and inappropriate.
2. The Statutory Committee had no power under Section 6 (3) of the *Queensland Law Society Act 1952* (as amended), or otherwise, to order the suspension from practice of the practitioner for an indeterminate period, namely until such time as he could satisfy the Council of the Law Society that he was a fit and proper person to practise.