

In the Matter of Gregory Paul Williams

Case Number: SCT/119
Date of Hearing: 30 April 2004
Appearing Before: Mr P Mullins (Presiding Member/Practitioner Member)
Mr M Conroy (Practitioner Member)
Dr J Lamont (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Fined \$10,000 and suspended for 12 months but that suspension not to become operative unless the practitioner defaults in the performance of the terms of the Order.

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 periods ending 31 March 2002 and 31 March 2003, to comply with his obligations as trustee with respect to the audit of his trust account.

Particulars

- 1.1 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 Gregory Paul Williams trading as Greg Williams & Co conducted at the ANZ Bank, Buddina.
- 1.2 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:
 - (a) By 31 May, lodge an auditor's report for that financial period in accordance with s.16(1) of the Trust Accounts Act; and
 - (b) by 14 June, lodge an audit certificate for that financial period in accordance with s.3 of the Legal Practitioner's Regulation 1996.
- 1.3 In breach of his duty, for the financial period ending 31 March 2002, the practitioner failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates.
- 1.4 In breach of his duty, for the financial period ending 31 March 2003, the practitioner failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates
- 1.5 The audit report and audit certificate for the financial period ended 31 March 2003 were lodged on 7 August 2003.
- 1.6 The audit report and audit certificate for the financial period ended 31 March 2002 has not been lodged.

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 October 2002 failed, in breach of his duty as a solicitor, and in breach of the requirements of regulation.12 of the Trust Accounts Regulations 1999, to undertake monthly reconciliations of his trust account.

Particulars

- 2.1 During the period April 2001 to October 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 – October 2001	September 2002	1 year 5 months since April 2001
November 2001 – November 2002	October 2002	12 months since November 2001

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 November 2001 to June 2002, dealt with clients' trust moneys in breach of the terms of the trust and in breach of Sections 7 and 8 of the Trust Accounts Act 1973, by, without authority or any other lawful entitlement, causing or permitting the said trust property to be intermingled with the general account.

Particulars

- 3.1 M & C/S
 - (a) On 30 June 2002, the practitioner transferred the sum of \$167.94 the property of his clients M & Ct, from his trust account to his general account in breach of section 8 of the Trust Accounts Act for costs and outlays that only totalled \$118.82.
 - (b) The said over-payment of \$49.12 was deposited to the general account in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement to transfer the same.
- 3.2 B/E
 - (a) On 30 November 2001, the practitioner received the sum of \$650 directly to his general account for costs and outlays from his client B, which amount included trust moneys in the sum of \$150.
 - (b) The said sum of \$150 was deposited into the general account in breach of section 7 of the Trust Account Act and without the practitioner having any lawful entitlement or authority to so deposit it.
 - (c) The trust deficiency of \$150 (together with a further amount of \$60 for sundries) was restored on 14 December 2001.

3.3 S/Purchase from N

- (a) On 21 May 2002, the practitioner transferred the sum of \$200 the property of his client S, from his trust account to his general account in breach of section 8 of the Trust Accounts Act for his balance costs and sundries that were only outstanding to the extent of \$118.
- (b) The said over-payment of \$82 was deposited to the general account in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement to transfer the same.
- (c) The trust deficiency of \$82 (together with a further sum of \$18) was restored on 11 June 2002.
- (d) On 10 October 2002, the practitioner transferred the sum of \$38 from his trust account to his general account in breach of section 8 of the Trust Accounts Act, in reimbursement of the overpayment of \$18 and on account of a \$20 "surcharge" for search fees.
- (e) The said \$20 "surcharge" was deposited to the general account in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement to transfer the same.

3.4 K/Purchase from H

- (a) On 30 June 2002, the practitioner transferred the sum of \$250 the property of his client K, from his trust account to his general account in breach of section 8 of the Trust Accounts Act for costs and outlays that were only outstanding to the extent of \$50.
- (b) The said over-payment of \$200 was deposited to the general account in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement to transfer the same thereby overdrawing the client's trust ledger by \$193.08.
- (c) As a consequence of these breaches, from June 2002 to November 2002, there was a trust deficiency of \$193.08, the said trust moneys having been unlawfully intermingled with the general account
- (d) The trust deficiency of \$200.00 was partially restored on 29 November 2002 to the extent of \$193.08 however the sum of \$6.92 has not been restored.

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 August 2001 to December 2002, dealt with clients' trust moneys in breach of the terms of the trust and in breach of Section 8(1) of the Trust Accounts Act and Section 10(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.

Particulars

4.1 **First Schedule – Overdrawings from August 2001 to November 2002**

No	Matter	Date Overdrawn	Amount Overdrawn (Debit balance)	Beneficiary of Trust Overdraw (general account, third party, client)	Date Restored	Comments
1.	G	13.08.01	16.50	Third party	14.08.01	Insufficient funds
2.	T	07.09.01 10.09.01 18.09.01	37.77 253.59 334.12	Third party Third party/client Third party	29.11.02 29.11.02 29.11.02	Incorrect recording of cheque details drawn 21.08.02
3.	L	08.11.01	0.10	Third party	26.02.02	Subtraction error
4.	T	27.11.01 19.12.01 30.06.02	309.50 307.50 467.50	Third party Client General account	17.12.01 26.08.02 26.08.02	Cheque for 467.50 entered but not received
5.	W	30.06.02	18.45	Third party	29.11.02	Failed to record cheque drawn on 29.11.01
6.	T	13.12.01 14.12.01 26.01.02 15.04.02 19.04.02 10.10.02	29.40 110.50 121.50 66.50 128.62 174.12	Third party Third party Third party Client Third party General account	29.11.02 29.11.02 29.11.02 29.11.02 29.11.02 29.11.02	Chqs drawn on 15.11.01 & 10.12.01 not recorded. Failed to record receipt drawn on 15.11.01
7.	B	14.12.01 01.05.02	139.95 251.25	General account Third party	29.11.02 29.11.02	Failed to record cheque drawn on 14.12.01
8.	W	06.03.02	36.50	Third party	29.11.02	Insufficient funds
9.	A	07.03.02	18.23	Client	29.11.02	Insufficient funds
10.	G	15.04.02 30.06.02	6.29 40.00	Third party General account	29.11.02 29.11.02	Subtraction error
11.	H	15.04.02	1.00	Third party	29.11.02	Incorrect recording of cheque details
12.	S	16.04.02	10.00	Third party	29.11.02	Subtraction error
13.	W	29.04.02 30.06.02	15.33 18.00	General account General account	29.11.02 29.1.102	Subtraction error
14.	H	02.05.02 30.06.02	198.90 200.00	General account General account	29.11.02 29.11.02	Incorrect recording of cheque details

No	Matter	Date Overdrawn	Amount Overdrawn (Debit balance)	Beneficiary of Trust Overdraw (general account, third party, client)	Date Restored	Comments
15.	B	24.06.02 19.07.02	83.46 183.46	Third party Third party	31.07.02 31.07.02	Incorrect recording of cheque details
16.	C	30.06.02	1.00	General account	29.11.02	Subtraction error
17.	E	30.06.02	0.32	General account	29.11.02	Subtraction error
18.	G	30.06.02	0.20	General account	29.11.02	Subtraction error
19.	H	30.06.02	45.00	General account	29.11.02	Incorrect recording of cheque details
20.	K	30.06.02	193.08	Third party	29.11.02	Failed to record chqs drawn on 15.01.02 & 16.01.02
21.	N	30.06.02	0.80	General account	29.11.02	Addition error in receipt 14.02.02
22.	P	30.06.02	0.19	General account	29.11.02	Subtraction error
23.	P	30.06.02	10.00	General account	29.11.02	Subtraction error
24.	W	30.06.02	5.00	General account	29.11.02	Failed to record cheque drawn on 18.04.02
25.	P	02.07.02	11.22	Third party	29.11.02	Insufficient funds
26.	K	08.07.02 10.07.02	13.22 26.44	Third party Third party	29.11.02 29.11.02	Failed to record two chqs drawn
27.	P	22.07.02	0.01	Client	29.11.02	Incorrect recording of cheque details
28.	Q	29.07.02	10.81	Third party	29.11.02	Failed to record two chqs drawn on 29.11.01
29.	T	29.07.02	0.05	General account	29.11.02	Insufficient funds
30.	S	08.08.02	0.50	General account	05.09.02	Subtraction error
31.	A	23.08.02 29.08.02 02.09.02 03.09.02	2.88 122.88 40.38 122.88	Client General account Third Party Client	29.11.02 29.11.02 29.11.02 29.11.02	Failed to record cheque drawn on 29.07.02
32.	B	30.09.02	2.00	General account	29.11.02	Subtraction error
33.	L	30.09.02	90.00	General account	29.11.02	Incorrect recording of cheque details
34.	R	10.10.02	0.43	General account	29.11.02	Subtraction error
35.	V	10.10.02	10.55	General account	29.11.02	Incorrect recording of cheque details
36.	K	08.11.02	462.68	Third party	10.01.03	Insufficient funds
		Total	\$4,750.56			

4.2 The matters particularised in the First Schedule resulted in a total trust deficiency from August 2001 to November 2002 in the sum of \$4,750.56 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 clients or diverse third parties, in breach of Section 8(1) of the Trust Accounts Act and regulation 10(1) of the Trust Accounts Regulation 1999.

4.3 The payments from the trust account as particularised in items 1-36 of the First 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

4.4 The trust deficiency of \$4,750.56 has been restored by the practitioner.

4.5 **Second Schedule – Overdrawings on 27 December 2002**

No	Matter	Date Overdrawn	Amount Overdrawn (Debit balance)	Beneficiary of Trust Overdraw (general account, third party, client)	Date Restored	Comments
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1.	S/S	27.12.02	997.00	General Account - costs & outlays	30.12.02	No trust funds held
2	S/M	27.12.02	431.10	General Account - costs & outlays	30.12.02	Insufficient funds
3	S	27.12.02	708.00	General Account - costs & outlays	30.12.02	No trust funds held
4	SM	27.12.02	2310.00	General Account - costs & outlays	30.12.02	No trust funds held
		Total	\$4,446.10			

- 4.6 At the times particularised in the Second Schedule, the practitioner caused or permitted the sum of \$4,446.10 to be transferred from his trust account to his general account, in payment of costs and outlays, in circumstances where the practitioner held no (or insufficient) trust funds for the matters in respect of which the said payments were made.
- 4.7 The moneys particularised in the Second Schedule were paid from the trust account to the general account in breach of section 8(1) of the Trust Accounts Act and regulation 10(1) of the Trust Account Regulations 1999 and without the practitioner having any authority or any other lawful entitlement to pay the same to his general account.
- 4.8 The trust deficiency of \$4,446.10 has been restored by the practitioner.
5. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that, further to the matters particularised in Charges 1 to 4 hereof, he, being a solicitor and trustee of property has, during the period December 2001 to November 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

- 5.1 In some 4 instances during December 2001, the practitioner caused payments to be made from his trust account by direct debit to the trust bank account, without the issue of a trust account cheque, in breach of Section 12(1) of the Trust Accounts Act.
- 5.2 In some 3 instances particularised in the Schedule below, the practitioner issued trust receipts but failed to deposit the same to the trust bank account on the day of receipt or as soon as possible thereafter, in breach of section 7(3) of the Trust Account Act.

Schedule

Trust Receipt No	Date Receipt Issued	Amount	Date banked to trust
4865	31.07.02	\$ 0.80	29.11.02
4922	30.08.02	\$ 0.41	29.11.02
5053	12.11.02	\$110.00	12.12.02

In each instance, the practitioner has reimbursed the trust bank account on the dates mentioned in the Schedule by cheques drawn from his general account.

- 5.3 Throughout the period October 2001 to November 2002, the practitioner's trust records were maintained such that:
- In breach of regulation 11(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;
 - In breach of regulation 14(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;
 - In breach of regulation 13 of the Trust Account Regulation 1999, details of separate trust ledger accounts were not maintained for which trust funds were received to the trust bank account for the matters of:
 - B/M;
 - L; and
 - C
 - In breach of regulation 21 of the Trust Account Regulation 1999, the practitioner did not maintain a trust account journal to record particulars of various trust funds transferred between trust ledger accounts, nor did the practitioner sign each entry in the journal authorising the transfer of trust funds as so required

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr Ian Foote, Solicitor
- (b) For the Practitioner:
Mr Ian Dearden, of Dearden Lawyers

Findings and Orders

Upon the undertaking of the practitioner to meet with a representative of the Queensland Law Society within three months from today to discuss outstanding issues from the audit report under s31, the Tribunal orders as follows:

1. The Tribunal grants leave to The Queensland Law Society to amend the Notice of Charge dated 10 December 2003 in paragraph 4.2 on page 6 in the first line by deleting "April" and inserting "August".
2. The Tribunal orders that the Practitioner pay a penalty to the Fund of \$10,000.
3. The Tribunal orders that the Practitioner attend and satisfactorily complete at his own expense the next available Trust Account module of the Practice Management course conducted by the Queensland Law Society, and the Tribunal recommends that the Practitioner's bookkeeper be given priority by the Queensland Law Society so that she may attend the course at the same time as the Practitioner.
4. The Tribunal orders that the Practitioner attend and satisfactorily complete at his own expense the next Professional Standards module of the Practice Management course conducted by The Queensland Society.
5. The Tribunal orders that audit reports from the Practitioner's own auditor on the Practitioner's Trust Account, at the Practitioner's own expense, be provided to the Queensland Law Society on a quarterly basis, commencing on 30 June, 2004, for a two year period.
6. The Tribunal orders that the Practitioner be suspended from practice for a period of 12 months, such suspension not to become operative unless the Practitioner defaults in the performance of any of the terms of this order or is convicted by this Tribunal of any charge relating to the administration of his Trust Account within two years from today.
7. The Tribunal orders that the Practitioner install and operate a computerised Trust Account system at his own expense within three months from today.
8. The Tribunal orders that the Practitioner pay the penalty by 12 equal monthly instalments, the first of which is to commence on 31 July 2004.
9. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to these proceedings together with the costs of the Clerk and the recorder, to be agreed, or failing agreement, to be assessed by Monsour Legal Costs Pty Ltd and that those costs as agreed or assessed be paid by 12 equal monthly instalments, the first of which is to commence on 31 July 2004.

Reasons

The Practitioner has pleaded guilty to five charges. By that plea, he has admitted that he has committed an offence under s16(1) of the Trust Account Act 1973 by his ongoing failure to ensure his trust account was audited and that the audit report and certificate be provided to the Queensland Law Society in respect of the years 2002 and 2003 by the required time. The reports were lodged subsequently. One of them was some four months late and the other some two years or thereabouts late.

He also accepts that he's committed an offence under s12(1) of the Trust Account Regulations for every month between April 2001 and November 2002 by failing to undertake monthly trust account reconciliations as soon as practicable after the end of each month. This was for an 18 month period.

He also accepts that he's committed four offences under s7(1) and 7(4) of the Trust Account Act by receiving or transferring clients' funds directly to his general account.

He also accepts that he has committed various offences contrary to s8(1) by transferring trust moneys to his general account without lawful authority to do so.

Further, he's accepted that he's committed some 40 misappropriation offences in breach of s8(1) of the Trust Account Act by wrongfully drawing against or causing payments to be made totalling some \$9,166.66 from his trust account and transferring those to his general account or disbursing them to third parties without lawful authority to do so; alternatively, in breach of s10(1) of the Trust Account Regulations by wrongfully drawing against or causing payments to be made totalling the amount of \$9,166.66 from the trust account when the withdrawal was more than the cleared funds available in the particular account for the particular matter. These deficiencies were only restored when the Society's auditor brought each of those matters to his attention.

The practitioner also accepts that he's failed to keep, operate and conduct his trust account in a proper and professional manner throughout a 12 month period from October 2001, and there were a number of particulars admitted which disclose matters contrary to the Trust Account Act and Regulations obligations.

For example, four instances of trust moneys being withdrawn other than by a trust cheques; three instances of failing to deposit trust moneys after issuing a trust account receipt; failing to apportion multiple drawings for costs and outlays in the cash book and failing to then allocate each drawing to individual trust accounts; failure to maintain a trust account ledger after trust funds had been received and failing to keep a trust account journal or record transfers of funds between trust ledgers.

All of these matters constitute, in the opinion of the Tribunal, professional misconduct and are very serious matters which involved the misuse of client trust moneys over a lengthy period and resulting in substantial ongoing trust deficiencies.

The practitioner has been careless and he's acted recklessly without regard to his professional obligations as solicitor and trustee.

The practitioner is some 45 years of age and he's been admitted for a period of 20 years. He has practised on his own account since March 1989 and continues to practice as a sole practitioner.

The matters the subject of these charges arose from a six week audit conducted by the Society of the practitioner's accounts as a result of his failure to lodge the 2002 audit report.

We think it's obvious that the practitioner's difficulties were created by his continued and persistent failure to reconcile his trust account and issue receipts, failure to bank and failure to post transactions to trust account ledgers.

As a direct result of the audit report by the Society on about 17 January, 2003, various officers of the Queensland Law Society were appointed as co-signatories to the practitioner's trust account under s10 of the Law Society Act. We were told that subject to the orders that the Tribunal will make, it's anticipated that the co-signatory arrangements will continue, although they'll be reviewed when a further audit is conducted by the Society. We think there's good reason for the Society to do that.

We've carefully considered the comparable decisions to which we were referred. We note that the Society submits that the appropriate penalty for this matter would range from a fine to a suspension. No monetary amount was submitted by the Society in relation to the appropriate fine should we consider fining the practitioner. It was submitted on behalf of the practitioner that the appropriate penalty was a fine of the order of some \$5,000 to \$7,500.

We believe this is a matter which is a most serious one, which continued over a long period of time. The practitioner has demonstrated a capability for recklessness and carelessness and so, the orders we propose should constitute both a deterrent and an appropriate penalty for the conduct of the practitioner. Further, the orders which we propose will properly protect the public by ensuring that there are checks and balances in place over a two year period from today.

The Queensland Law Society submits that there is no evidence of dishonesty on the part of the practitioner. We think the evidence demonstrates recklessness and carelessness but not dishonesty.

This practitioner is a sole practitioner and this has compounded his carelessness. He's not had the benefits of a partner or partners or properly qualified staff to support him. He's obviously led a busy practice with many demands on him, compounded by his own personal problems, but those factors cannot excuse his neglect of his trustee duties.

He has demonstrated a laudable community involvement including a commitment to pro bono work and to Legal Aid. The practitioner will benefit from and the public will be protected by the orders we propose in relation to the installation of a computer based trust account system. This will be at a considerable cost to the practitioner.

It is noted that there has been no pecuniary loss by the practitioner's clients and there is no claim to compensation by any of them. All of the deficiencies have been restored. This is a distinguishing feature of this matter as opposed to some of the authorities to which we were referred.