

In the Matter of Practitioner X

Case No: SC/388
Date of Hearing: 3 June 1997
Appearing Before: Mr T M Treston (Acting Chairman)
 Mr A W Watt
 Mr G C Fox
Penalty: Fined \$15,000.

Charges

The allegations in the case formulated by the Council of the Queensland Law Society Incorporated were set out in paragraphs one to eleven inclusive of the Application of the Queensland Law Society Incorporated dated the 9th day of December 1996 which states as follows:

1. That on or about 24 October 1995, the practitioner wrongfully withdrew from his trust account the sum of \$4,000 to make payment to himself for professional costs and outlays in relation to the matter WR & VL S re j in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.
2. That on or about 13 July 1995, the practitioner received payment in the sum of \$600 from B & M H on account of costs and outlays to be incurred in relation to the Estate of A L H deceased and in breach of section 7(1) of the *Trust Accounts Act 1973*, the practitioner paid the said sum into his general account rather than his trust account.
3. That the practitioner wrongfully withdrew from his trust account sums amounting to \$3,500 held on trust for B & M H to make payments to his general account in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.

Particulars

Date	Amount
02/08/95	\$750
07/08/95	\$750
13/09/95	\$1,000
29/09/95	\$1,000
Total	\$3,500

4. That on or about 1 November 1995, the practitioner wrongfully withdrew from his trust account and paid to his general account in respect of costs and outlays the sum of \$1,000 held on trust for R K B and T M B in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.

5. That on or about 22 January 1996, the practitioner received payment in the sum of \$500 from R K B on account of costs and outlays to be incurred in relation to his matrimonial property settlement and having paid the sum of \$500 into his trust account, the practitioner on or about 22 January 1996 wrongfully withdrew from his trust account and paid to his general account in respect of costs and outlays that sum of \$500 held on trust for R K B in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.
6. That the practitioner wrongfully withdrew from his trust account sums amounting to \$7,470 held on trust for T M B to make payments to himself for professional costs and outlays payable by R K B and in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.

Particulars

Date	Amount
07/02/96	\$1,000
09/02/96	\$1,000
06/03/96	\$1,000
29/03/96	\$2,000
24/05/96	\$1,000
31/05/96	\$1,470
Total	\$7,470

7. That the practitioner grossly overcharged L D C and P E C in respect of the sale of their property to C H Pty Ltd

Particulars

- (a) On or about 23 January 1996, the practitioner forwarded to Mr and Mrs C an account claiming professional costs and outlays in the sum of \$11,110.
- (b) On or about 23 February 1996, the practitioner forwarded to Mr and Mrs C a bill of costs in taxable form claiming professional costs and outlays in the sum of \$11,117.80;
- (c) The amount charged by the practitioner for professional costs in each of the said bills was grossly in excess of a fair and reasonable charge for the work done by the practitioner.
- (e) A fair and reasonable charge for the work was not more than \$3,367.25 (being the sum at which the practitioner's costs and outlays were taxed) alternatively not more than \$5,234.80 (being the sum assessed by Ryan Cost Consultants Pty Ltd).
8. That on or about 28 February 1996, the practitioner wrongfully withdrew from his trust account the sum of \$10,781.90 held on trust for Mr and Mrs C to make payment to himself for costs and outlays in circumstances other than those set out in section 8(1) of the *Trust Accounts Act 1973*.

9. That in or about February 1996, in breach of Rule 85 of the Rules of the Queensland Law Society Incorporated, the practitioner acted for G Pty Ltd and for R E G, CP G and DM G in relation to the making of a loan in the sum of \$15,500 from G Pty Ltd to RE G, CP G and DM G and the taking of mortgage security in relation thereto.
10. That in or about September 1995, in breach of Rule 85 of the Rules of the Queensland Law Society Incorporated, the practitioner acted for RA & J L and for Mrs J F and Mr G L in relation to the making of a loan in the sum of \$50,000 from RA & J L to Mrs J F and Mr G L and the taking of mortgage security in relation thereto.
11. That the practitioner withdrew moneys from his trust account without ensuring that sufficient trust moneys were held on behalf of the party in question and without ensuring that the amounts of such withdrawals were no more than the amounts of such trust moneys.

Particulars

TRUST LEDGER ACCOUNT	AMOUNT OVERDRAWN	DATE OVERDRAWN	DATE RESTORED
The Firm-Branch office account	\$2,143.75	02/02/96	28/03/96
The Firm group tax	\$1,347.40	01/12/95	25/03/96
L R L S Pty Ltd group tax	\$500.00	22/03/96	17/05/96
R	\$10.00	12/01/96	19/02/96
S	\$300.00	26/02/96	31/05/96
N	\$42.30	01/05/96	17/05/96
S	\$300.00	31/03/96	17/05/96
L	\$15.50	19/04/96	17/05/96 (\$5.35) 25/06/96 (\$10.15)
L	\$15.00	31/05/96	25/06/96
G	\$15.00	19/04/96	17/05/96
N	\$20.00	21/03/96	25/03/96
H	\$8.00	25/03/96	17/05/96
H	\$15.80	17/04/96	17/05/96
E	\$12.00	24/04/96	17/05/96
Q	\$27.00	30/10/95	13/11/95
	\$37.00	17/11/95	20/11/95
S/C	\$88.00	30/04/96	17/05/96
S/C	\$350.00	01/04/96	29/04/96
A/S	\$1,134.31	10/08/95	13/11/95
V/N	\$600.00	07/02/96	19/02/96 (\$300.00) 25/03/96 (\$300.00)
A	\$4.00	28/03/96	17/05/96
S	\$30.00	17/11/95	20/11/95
M	\$5.00	02/02/96	19/02/96
H	\$40.00	21/03/96	25/03/96
K	\$300.00	31/08/95	30/11/95
The Firm professional fees	\$216.21	27/12/95	30/05/96
H MI	\$289.00	30/01/96	05/02/96
F	\$500.00	04/03/96	29/05/96
Y/U	\$185.85	05/06/96	27/06/96
M	\$16.00	08/01/96	19/02/96
H/L	\$1,275.00	25/03/96	02/04/96
S/J	\$4,000.00	24/10/95	08/11/95"

On the 3rd day of June 1997 the matter came on for hearing before the Statutory Committee.

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

Mr T O'Gorman, solicitor, of Messrs Robertson O'Gorman Solicitors appeared for the practitioner.

Mr O'Gorman stated that the practitioner pleaded guilty to the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 8, 9 and 11 of the Application of the Queensland Law Society Incorporated dated the 9th day of December 1996. The Society did not proceed with Charge 10.

Neither party called oral evidence in respect of the charges.

Submissions

The Society's solicitor submitted as follows:

There were six charges relating to the transfer of funds from trust account to general account without authority, Charge 1 \$4,000, Charge 3 \$3,500, Charge 4 \$1,000, Charge 5 \$500, Charge 6 \$7,470 and Charge 8 \$10,781.90. Charge 2 involved the payment of funds received in the sum of \$600 directly into the general account when the money should have been paid into trust.

Relevant to Charge 7 the practitioner acted for Mr & Mrs C on the sale of their property valued at \$2 million. On 23 January 1996, the practitioner rendered an account for \$10,900 for professional fees and \$210 for outlays, a total of \$11,110. The clients were dissatisfied with the account and requested a Bill of Costs in taxable form. The practitioner then had an assessment of his costs prepared by Ryan Costs Consultants. That assessment was in the amount of \$4,995.25 which included care and consideration at the rate of 30 percent. Mr Ryan commented that:

'To get anywhere near what you would have charged your client, care and consideration would have to be 100%. Presently I am not convinced that this matter warrants care and consideration or that magnitude'.

The practitioner disregarded that assessment.

The practitioner then delivered a Bill of Costs in taxable form. The Bill declared that the Supreme Court scale had been applied. That was not the case. Many items were charged at a rate considerably higher than the applicable item in the Supreme Court scale. The practitioner then claimed care and consideration in the amount of \$4,000, a rate of 60 percent of the already inflated item charges.

The Bill was eventually taxed in September 1996. It was allowed at \$3,367.25.

It was not the Society's position that an assessment by a Taxing Officer would automatically render the original bill an overcharge. However, it was submitted that the Committee ought to take two factors into account in addition to the end result of taxation and Mr Ryan's assessment, namely, the purported application of the Supreme Court scale in circumstances where it was patently obviously that that scale had not been applied and the claim for care and consideration at 60% calculated on the inflated figure for the items charges.

In relation to Charge 9, the practitioner acted for the mortgagee G Pty Ltd in relation to the loan by that company to the G family (including Mr R E G) in the sum of \$15,500. One purpose of that loan was to provide funds to be paid to the practitioner in order to secure his representation of Mr R E G in criminal proceedings. In fact, of the sum of \$15,500, \$10,200 was applied for that purpose.

Charge 11 outlined that on 31 occasions between 10 August 1995 and 31 May 1996, the practitioner overdrew his trust account. Liabilities of the practice, which one would normally expect to be paid out of the general account, were being paid through the trust account.

It was submitted that the practitioner was guilty of professional misconduct and that the range of penalty would include a period of suspension but the more likely outcome would be a substantial fine.

The practitioner's solicitor submitted as follows:

In relation to Charge 7 the practitioner applied the 1991 Conveyancing Scale. Whilst he might be criticised for dressing up the scale in the Bill of Costs in taxable form, his position was that he felt he was entitled to apply the 1991 scale. That was the most recent scale that he was aware of. He went to that. He applied it. If it was okay in 1991 to apply the Law Society Conveyancing Scale, how could it be said in 1995 and 1996 that to charge an amount equivalent to that scale would be gross overcharging.

On the scale that was operating on 1 July 1991, where consideration was over \$100,000, there was a base fee of \$1,100 plus 0.5 percent of the consideration over \$100.. Therefore, on a \$2.1 million sale the base fee would be \$1,100 plus 0.5 percent of \$2 million, \$10,000, a total of \$11,100.

It was conceded that the practitioner could be criticised for the way in which he went about formulating the Bill of Costs and he accepted that criticism but it was not a case of gross overcharging.

In relation to Charge 11, it was conceded that there was poor bookkeeping. The practitioner's bookkeeper had made a statement which detailed personal difficulties she was encountering at the relevant time which contributed to the situation. However, the practitioner accepted that he should have grasped the situation and ensured that the bookkeeping was kept up to standard. It was conceded that a situation did develop which resulted in some \$4,000 of practice liabilities being met out of trust account but that was not done deliberately and it was not done with the knowledge of the practitioner.

The practitioner had installed an office system which included software which would not allow an operator to draw funds from a trust ledger when the balance of funds recorded on the ledger were not available either through deficiency or uncleared funds and would not allow the operator to draw funds from a trust account when that action would cause a balance of the trust account to go into debit. There was also a dedicated field to indicate whether a trust authority had been received from the client and the date on which the trust authority had been signed.

In relation to the matters in which there was no authority or no sufficient trust account authority, the practitioner accepted that he was not exercising sufficient authority of supervision over employed solicitors.

The drafting of adequate trust account authority was being attended to.

It was submitted that it would be appropriate to find the practitioner guilty of unprofessional conduct and to find him no more than \$10,000.

Findings and Orders

THE COMMITTEE ORDERED as follows –

The Committee was not satisfied, in all of the circumstances of the case, that charge number 7 had been proved.

The Committee found the facts set out in paragraphs 1, 2, 3, 4, 5, 6, 8, 9 and 11 of the Application of the Queensland Law Society Incorporated dated the 9th day of December 1996, as admitted by the practitioner, proved. The Committee found that those facts constituted professional misconduct. The Committee found the practitioner guilty of professional misconduct.

The Committee fined the practitioner the sum of \$15,000 to be paid by equal monthly instalments of \$1,250, the first payment to be made on the 1st day of July 1997.

The Committee further ordered that the practitioner enrol in the next Trust Account Segment or in a later Trust Account Segment of the Practice Management Course provided it was no later than, and was completed within, 12 months of today's date.

The Committee further ordered 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 shorthand writers to be assessed or taxed and the committee directed that the Clerk to the Statutory Committee shall be entitled to his costs as a Solicitor and perusing documents filed, and care and consideration.