

## The Solicitors Complaints Tribunal

### Reasons

The practitioner has been charged with four counts of misconduct. Charge 1 arises from the practitioner transferring a sum of money of \$8,280 from trust to his general ledger, when he did not have the client's authority to do so.

The practitioner submitted that he thought he had the written authority of his client to transfer the monies from trust, but he concedes before this tribunal that he could not locate the authority, and in doing so, he also concedes that his office systems at that time were inadequate.

Charges 2 to 4 arise from the failure of the practitioner to respond to correspondence from the Queensland Law Society, asking the practitioner to respond to complaints made against him.

The practitioner did not fully and finally respond to these complaints until his letter dated 6 June, 2002, which was just days before this tribunal hearing.

The practitioner has not adequately explained the delay caused in responding to these complaints, and the tribunal considers the practitioner's failure to explain adequately that delay, and the delay itself, to be most disconcerting.

The Queensland Law Society has the statutory obligation to investigate complaints against solicitors and the Society relies upon the co-operation of its members to ensure that its statutory obligations are fulfilled.

When practitioners fail to cooperate with the society, the regulatory system contained in the Queensland Law Society Act is placed at risk, and also places at risk the confidence of the public in the self-regulation of the profession by the Queensland Law Society.

The tribunal considers that the matters that are the subject of these charges are serious and finds that the practitioner has been guilty of professional misconduct on all 4 charges.

The tribunal considers that the public interest demands that the practitioner is dealt with severely for his breaches of the Act, given the fact that he has been found guilty of professional misconduct.

The tribunal accordingly orders the practitioner to pay a penalty of \$5,000 to the Fund.

The tribunal is also concerned that the evidence presented to it does raise indications that the practitioner's conduct of his practice may be inadequate. In response to this, the tribunal also orders that the Queensland Law Society appoint a solicitor at the practitioner's cost to audit the files of the practitioner on 2 occasions over the next 12 months, and that reports about the practitioner's practice be supplied to the Queensland Law Society and to the practitioner following those file audits.

## In the Matter of Gregory John Huddleston

**Case No:** SCT/71  
**Date of Hearing:** 11 June 2002  
**Appearing Before:** Ms C C Endicott (Chairperson)  
Mr P M Conroy  
Dr J Lamont (Lay Member)

### Charges

1. The practitioner misappropriated \$3,500 of client trust funds when acting for a client in Supreme Court proceedings;
2. The practitioner caused the sum of \$2,750 to be paid from his client's individual trust ledger account to pay agents fees when there were insufficient funds in the

said account, resulting in the trust account being overdrawn by \$2,693.26;

3. The practitioner misappropriated other client trust moneys by causing two amounts of \$5,000 each to be drawn on his client's individual trust ledger account when there were insufficient funds in the said account which the practitioner knew or ought to have known, resulting in the trust account being overdrawn by \$2,361.98 on the first payment and \$7,361.98 on the second payment;
4. On 19 October 2000, the practitioner, in breach of s8 of the *Trust Accounts Act 1973*, caused the sum of \$800 to be transferred from his client's individual trust ledger account to his firm's general account when he was not authorised so to do;
5. On 22 November 1999, the practitioner, in breach of s8 of the *Trust Accounts Act 1973*, caused the

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sum of \$500 to be transferred from his client's individual trust ledger account to his firm's general account when he was not authorised so to do;

6. On 15 March 2001, the practitioner, in breach of s8 of the *Trust Accounts Act 1973*, caused the sum of \$363.01 to be transferred from his client's individual trust ledger account to his firm's general account when he was not authorised so to do;

### Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr DG Searles, solicitor, McCullough Robertson Lawyers
- (b) For the practitioner:  
Mr ID Dearden, solicitor, Dearden Lawyers

### Findings and Orders

1. The tribunal granted leave to the applicant to amend the notice of charge in the following respects:
  - (a) In charge 3.6 by deleting "particular 4.4" and inserting "particular 3.4";
  - (b) In charge 3.7 by deleting "particular 4.4" and inserting "particular 3.4";
  - (c) In charge 3.8 by deleting "particular 4.5" and inserting "particular 3.5" and by deleting "particular 4.4" and inserting "particular 3.4";
  - (d) In charge 4.3 by deleting "particular 5.2" and inserting "particular 4.2";
  - (e) In charge 4.4 by deleting "particular 5.2" and inserting "particular 4.2";
  - (f) In charge 4.6 by deleting "particular 5.3" and inserting "particular 4.3";
  - (g) In charge 5.5 by deleting "particular 6.4" and inserting "particular 5.4".
2. The practitioner having admitted the facts contained in all six charges, the tribunal finds that all charges have been proved and that the facts constitute professional misconduct.
3. The tribunal finds the practitioner has been guilty of professional misconduct.
4. Upon the practitioner's undertaking to allow the Queensland Law Society to maintain a co-signatory under s10 of the *Queensland Law Society Act 1952* to the practitioner's trust account and the practitioner's

agreement that the s10 arrangements will continue for a period of 12 months from the date of this order, the tribunal orders as follows:

- (a) that the practitioner pay a penalty of \$5,000.00 to the Fund;
  - (b) that the practitioner attend the next available Practice Management Course conducted by the Queensland Law Society Incorporated and complete the same satisfactorily;
  - (c) that the practitioner's practice be audited by a suitably qualified senior legal practitioner, to be appointed by the Queensland Law Society Incorporated to inspect and report on the practitioner's files and systems;
  - (d) that reports on the practitioner's practice be provided to the Queensland Law Society Incorporated and to the practitioner at the practitioner's cost, and such reports be provided each month for a period of 2 years, with the first inspection and report to occur no later than 3 months from the date of this order.
5. The tribunal further orders that the costs of the Queensland Law Society Incorporated of and incidental to this notice of charge and to the previous mention of this notice of charge be paid by the practitioner and be assessed by Monsour Legal Costs Pty Ltd, such costs to include the costs of the clerk and of the recorder.
  6. The tribunal further orders that both the costs as assessed and the monetary penalty be paid within 12 months of today's date.
  7. The tribunal is not satisfied that the complainant, Y, has suffered any pecuniary loss because of the professional misconduct of the practitioner and dismisses any claim for compensation by Y in relation to these charges.

### Reasons

The Queensland Law Society has brought 6 charges against the practitioner, arising from the conduct of his practice as a solicitor.

All of the charges relate to the manner in which the practitioner conducted his trust account.

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In four of the charges, namely, charges 1, 4, 5 and 6, the practitioner transferred monies from his trust account to his general account without the written authority of his clients.

The tribunal is satisfied that the practitioner did not make any of these transfers from trust dishonestly, but did so under a mistaken belief that he was entitled to make the transfers in all cases.

In charges 2 and 3, the practitioner drew cheques on his trust account when there were insufficient funds available to meet those cheques, with the result that the trust account became overdrawn.

During the periods of time that the trust account remained overdrawn, the practitioner had used the trust funds of other clients who had money in the practitioner's trust account at the same time.

The tribunal was not presented with evidence in accordance with the standards of proof required by *Brigenshaw* that the use of funds the subject of charges 2 and 3 arose from any dishonesty on the part of the practitioner.

The tribunal in this regard has been referred to the decision of the High Court in *Walter v The Queensland Law Society*, and the tribunal notes and relies upon the following comments of the High Court in that case, namely:

“Allegations such as these heighten the impression that the gravamen of the complaint against the appellant was of procedural impropriety and incompetent management of lending transactions.

In this context, in the absence of express assertion before or during the hearing, the allegation contained in paragraph 15(c)(vii) should not be read as necessarily involving an allegation of stealing or other fraudulent conduct. It follows that the bare finding of the committee that the allegation was proved falls short of a finding of dishonesty.”

In this case, the allegations of misappropriation have been made in circumstances that have led the tribunal to find that dishonesty or fraudulent conduct was not involved in this case.

The practitioner admits that the conduct of his practice was wanting, and the practitioner has given evidence that he has taken steps to improve the practice in ways which would overcome the problems that have resulted in these charges.

The orders that the tribunal proposes to make will reinforce the necessity of the practitioner maintaining proper trust records and professional standards at some substantial financial cost to the practitioner.

The tribunal has to consider now the statutory declaration received from one of the complainants, which was involved in charges 4 and 5 before us today.

The tribunal has difficulty in understanding whether in fact Y has made a claim for compensation. The tribunal has, however, given consideration to the statutory declaration and has formed the view that it is not satisfied that Y has suffered any pecuniary loss because of the professional misconduct of the practitioner, and in view of these findings will not award any compensation to Y in relation to these charges.