

In the Matter of Patrick Desmond Mallett

Case No: SCT/2&8
Date of Hearing: 16 June 1998
Appearing Before: Mr J S P O’Keeffe (Chairperson)
Mr P Martinez
Ms D A Wilson (Lay Member)
Penalty: Struck off

Charges

On 16 June 1998, the Solicitors Complaints Tribunal heard the following charges brought by the Council of the Queensland Law Society:

Notice of Charge No. 2

1. On or around 16 August 1996 when acting for client SJB, the solicitor failed to restore to his trust account the sum of \$828.30 when he knew or ought to have known that it had been mistakenly paid into his general account on 15 August 1996 rather than his trust account, with the result the said sum was used for his own purposes.

Particulars

- 1.1 At all material times the solicitor acted for client SJB in relation to a charge of stealing certain moneys.
- 1.2 Acting on the advice of his solicitor to the effect that restitution of the moneys the subject of the charge would ultimately be ordered in the event of his conviction of the charge, on 15 August 1996 the client caused the sum of \$19,828.30 to be paid to the solicitor (“restitution moneys”).
- 1.3 The restitution moneys were paid as to \$18,000.00 by the client’s sister, LD, and as to \$1,828.30 by the client and both amounts were paid directly into the solicitor’s general account when, being trust funds, they should have been paid into the solicitor’s general trust account.
- 1.4 The following day, 16 August 1996, upon realizing the funds had mistakenly been paid

into his general account, the solicitor caused the sum of \$19,000.00 only to be withdrawn from his general account and deposited into his general trust account to the credit of his client’s individual trust ledger account.

- 1.5 The solicitor failed to restore to his general trust account to the credit of his client’s individual trust ledger account the balance of the restitution moneys of \$828.30 and used those trust moneys for his own purposes.
 - 1.6 The solicitor has not repaid the said sum of \$828.30 to his client.
2. On 16 October 1996, when acting for client SJB the solicitor misappropriated his client’s funds totalling \$1,750.00.

Particulars

- 2.1 At all material times the solicitor acted for client SJB in relation to a charge of stealing certain moneys.
 - 2.2 As at 16 October 1996 there was a sum of \$19,000.00 standing to the credit of his client’s individual trust ledger account.
 - 2.3 On 16 October 1996 the solicitor caused to be transferred from his client’s individual trust ledger account to his general account the sum of \$1,750.00 purportedly in part payment of an account for legal costs.
 - 2.4 The payment was made without the knowledge or authority of his client, when no account for legal costs had been rendered by the solicitor to the client and in circumstances where the solicitor was not otherwise entitled to payment.
 - 2.5 The solicitor has not repaid the sum of \$1,750.00 to his client.
3. On 31 October 1996, when acting for client SJB the solicitor misappropriated his client’s funds totalling \$500.00.

Particulars

- 3.1 At all material times the solicitor acted for client SJB in relation to a charge of stealing certain moneys.
- 3.2 As at 31 October 1996 there was the sum of \$17,250.00 standing to the credit of his client’s individual trust ledger account.

- 3.3 On 31 October 1996 the solicitor caused to be transferred from his client's individual trust ledger account to his general account the sum of \$500.00 purportedly in part payment of an account for legal costs.
 - 3.4 The payment was made without the knowledge or authority of his client, when no account for legal costs had been rendered by the solicitors to the client and in circumstances where the solicitor was not otherwise entitled to payment.
 - 3.5 The solicitor has not repaid the sum of \$500.00 to his client.
4. On or about 1 August 1997 when acting for client EWM the solicitor misappropriated trust funds totalling \$5,000.00 paid to him for the use and benefit of his client.

Particulars

- 4.1 At all material times the solicitor acted for client EWM (*"the client"*) in relation to a criminal charge preferred against him in the Australian Capital Territory.
 - 4.2 On 31 July 1997 the client's father paid to the solicitor the sum of \$5,000.00 in cash to be deposited in the solicitor's general trust account to the credit of his client's individual trust ledger account to meet future legal expenses to be incurred in engaging legal representation for the client in the Australian Capital Territory.
 - 4.3 The solicitor failed to pay the sum of \$5,000.00 into his general trust account to the credit of his client's individual trust ledger account, did not use the moneys for the purpose for which they were paid to him, and has used the moneys for his own purposes. He has not repaid the moneys to his client or his client's father.
5. On 10 July 1997, when acting for client PS in relation to a matrimonial property settlement the solicitor, in breach of Section 7 of the *Trust Accounts Act 1973* failed to pay trust moneys into his general trust account.

Particulars

- 5.1 At all material times the solicitor acted for client PS in relation to a matrimonial property settlement.
- 5.2 On 10 July 1997 the solicitor received from his client the sum of \$1,500.00 for anticipated costs

and outlays.

- 5.3 The sum of \$1,500.00 included an unidentified sum for future unexpended outlays which sum constituted trust moneys within the meaning of that term in the *Trust Accounts Act 1973* and, in accordance with Section 7(1) of that Act should have been paid into the solicitor's general trust account.
- 5.4 In breach of Section 7(1) of the said Act, the solicitor paid the sum into his general account.

Notice of Charge No. 8

1. In or around March 1998, whilst under suspension from practice as a solicitor, the solicitor acted for client TAH in relation to certain Family Court proceedings in which she was then involved.

Particulars

- 1.1 The solicitor's practising certificate was suspended by resolution of the Council of Queensland Law Society Incorporated and the Society was appointed Receiver of the trust property of the solicitor pursuant to Section 11A(1A)(b)(ii) of *Queensland Law Society Act*. The suspension remains current.
- 1.2 On 11 March 1998 at the residence of client TAH, the solicitor entered into a retainer agreement with client TAH whereby he agreed, for the sum of \$300.00, to act for client TAH in seeking to negotiate with client TAH's spouse a resolution of then current Family Court property proceedings.
- 1.3 On 12 March 1998, client TAH paid to the solicitor the agreed sum of \$300.00.
- 1.4 On 20 March 1998, the solicitor telephoned solicitor W of legal firm A, then acting for client TAH's spouse. The solicitor informed solicitor W:
 - (a) that he was a solicitor and a consultant to legal firm B;
 - (b) that client TAH was dissatisfied with her earlier legal representation and had briefed him to take over the matrimonial file;
 - (c) that client TAH would not be proceeding with the application for sole use and occupation of the matrimonial home then set down for hearing on 23 March 1998.

- 1.5 On or about 23 March 1998, the solicitor telephoned solicitor X, an employee of legal firm C and informed solicitor X:
 - (a) that he was employed by legal firm B;
 - (b) that he acted for client TAH;
 - (c) that he wanted a solicitor from legal firm C to appear in the Family Court that morning as his town agent to consent to the withdrawal of client TAH's application for sole use and occupation.
2. On or before 20 March 1998 the solicitor falsely represented to solicitor W, a practising solicitor, in relation to certain Family Court proceedings, that he was a consultant solicitor to legal firm B.

Particulars

- 2.1 At all material times, solicitor W was employed by legal firm B and had the conduct of the Family Court property proceedings on behalf of his client KH against client TAH.
- 2.2 On 20 March 1998, the solicitor telephoned solicitor W, a solicitor in the employ of legal firm A, then acting for client TAH's spouse. The solicitor informed solicitor W:
 - (a) that he was a solicitor and a consultant to legal firm B;
 - (b) that client TAH was dissatisfied with her earlier representation and had briefed him to take over client TAH's matrimonial file;
 - (c) that client TAH would not be proceeding with the application for sole use and occupation of the matrimonial home then set down for hearing on 23 March 1998.
- 2.3 At the time of making the above statements, the solicitor was not a consultant of legal firm B and was, in fact, under suspension from practice as a solicitor pursuant to a resolution of the Council of Queensland Law Society Incorporated of 5 August 1997 suspending his practising certificate and appointing the Society Receiver of his trust property pursuant to Section 11A(1A)(b)(ii) of the *Queensland Law Society Act*.
3. On or about 23 March 1998, the solicitor falsely represented to legal firm C in relation to certain Family Court proceedings that he was employed by legal firm B.

Particulars

- 3.1 On or about 23 March 1998, the solicitor telephoned solicitor X of legal firm C and informed solicitor X:
 - (a) that he was employed by legal firm B;
 - (b) that he acted for client TAH;
 - (c) that he wanted a solicitor from legal firm C to appear in the Family Court that morning as his town agent to consent to the withdrawal of client TAH's application for sole use and occupation.
- 3.2 At the time of making the above statements, the solicitor was not a consultant to legal firm B and was, in fact, under suspension from practice as a solicitor pursuant to a resolution of the Council of the Queensland Law Society Incorporated of 5 August 1997 suspending his practising certificate and appointing the Society Receiver of his trust property pursuant to Section 11A(1A)(b)(ii) of the *Queensland Law Society Act*.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:

Mr D G Searles, solicitor of McCullough Robertson, Solicitors.
- (b) For the practitioner:

Mr I Dearden, solicitor of Dearden Lawyers.

Findings and Orders

1. The Tribunal finds the facts as alleged in all of the charges contained in Notice of Charge Nos. 2 and 8 other than Charge No. 6 in Notice of Charge No. 2 which was withdrawn by the Queensland Law Society Incorporated, and which were admitted by the practitioner, proved.
2. The Tribunal finds the practitioner guilty of professional misconduct on the charges as admitted.
3. The Tribunal orders that the name of Patrick Desmond Mallett be struck from the Roll of Solicitors for the Supreme Court of Queensland.
4. The Tribunal orders that Patrick Desmond Mallett pay the costs of the Queensland Law Society Incorporated

including reserved costs in connection with Notice of Charge Nos. 2 & 8 and directs that such costs be taxed.

5. The Tribunal further orders that Patrick Desmond Mallett be granted twelve months within which to pay costs.

Reasons

The practitioner through his solicitor has admitted that charges 2, 3 and 4 of Notice of Charge No. 2 and charges 1, 2 and 3 of Notice of Charge No. 8 constitute professional misconduct. He has further accepted that charges 1 and 5 of Notice of Charge No. 2 constitute unprofessional conduct.

The solicitor for the practitioner has acknowledged that the appropriate penalty is that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.

The Solicitors Complaints Tribunal

In the Matter of Mark Allan Creedon

Case No: SCT/9
Date of Hearing: 30 June 1998
Appearing Before: Mr T M Treston (Chairperson)
Mr M Meadows
Mrs M Green (Lay Member)
Penalty: Strike off

Charges

1. On or about 16 May 1997 and 28 May 1997, whilst in possession for safe custody purposes of five certificates of title, the practitioner forged documents purporting to be mortgages over the said properties. Particulars of the mortgages forged by the practitioner are as follows:

"First Mortgage" - \$150,000.00

"Second Mortgage" - \$300,000.00

In connection with the first mortgage, the practitioner forged the signatures of his clients on the following documents:

- (a) a form of acceptance dated 16 May 1997 of a letter of offer dated 15 May 1997;
- (b) a loan statement, authority and undertaking dated 16 May 1997;
- (c) a trust account authority dated 16 May 1997.

2. In relation to the second mortgage, the practitioner forged the signatures of his clients on the following documents:

- (a) a loan statement, authority and undertaking dated 28 May 1997;
- (b) a warrant;
- (c) a trust account authority dated 28 May 1997;
- (d) a consumer credit code declaration dated 28 May 1997.

3. The practitioner fraudulently misappropriated the sum of \$185,165.43, banked and receipted 7 August 1997, being the proceeds of a superannuation payment from the Government Superannuation Office received in trust for an estate.

4. The practitioner fraudulently misappropriated the following further trust moneys:

- (a) \$100,000.00, being funds provided to him on account of private mortgage purposes; and
- (b) \$130,000.00, being funds provided on account of private mortgage purposes.

Each of the above amounts was credited to an unrelated trust ledger as follows:

Date	Amount
02/05/96	\$100,000.00
30/07/96	\$130,000.00