

In the Matter of James Patrick O'Callaghan

Case No: SCT/57
Date of Hearing: 9 October 2001
Appearing Before: Ms C C Endicott (Chairperson)
Mr P Short
Ms I Vallin-Thorpe (Lay Member)
Penalty: Struck Off

Charges

1. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor, and a partner of the firm of CCW, did, during the period September 1994 to May 2000, fraudulently misappropriate the sum of \$804,857.14 from the CCW general account, by causing the said sum, by a series of diverse payments, as particularised in schedule 1 hereto, to be paid from the general account and applied to or for his own use and benefit, or at his direction, in circumstances where the practitioner had no lawful entitlement to the said sum.

Particulars

- (a) At all material times the practitioner was a partner of the firm of CCW.
- (b) By some 160 diverse payments during the period September 1994 to May 2000, as particularised in schedule 1A hereto, the practitioner caused the sum of \$417,005.24 to be paid from the CCW general account.
- (c) The said sum was applied to or for the practitioner's own use and benefit, or at his direction, in circumstances where the practitioner, as he well knew, had no lawful entitlement to the sum.
- (d) The practitioner subsequently undertook or caused to be undertaken steps to fraudulently recover the said payments from diverse clients of the firm, in circumstances where the said clients had no lawful liability for the said payments.
- (e) Further by some 94 diverse payments during the period December 1996 to May 2000, as particularised in schedule 1B hereto, the practitioner caused the sum of \$387,851.93 to be paid from the CCW general account.
- (f) The said sum was applied to or for the practitioner's own use and benefit, or at his direction, in circumstances where, as he well knew, he had no lawful entitlement to the sum.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr RG Perrett, solicitor of Clayton Utz, solicitors
- (b) For the practitioner:
Mr MP Quinn, solicitor of Gilshenan and Luton, solicitors

Findings and Orders

1. The tribunal finds that the facts alleged constitute professional misconduct and, noting the plea of guilty by the practitioner, finds the practitioner guilty of professional misconduct.
2. The tribunal orders that the name of James Patrick O'Callaghan be struck from the roll of Solicitors of the Supreme Court of Queensland.
3. The tribunal further orders that James Patrick O'Callaghan pay the costs of the Queensland Law Society Incorporated in relation to this charge, including the costs of the Clerk and the Recorder, such costs to be agreed between the Queensland Law Society and the practitioner or, failing agreement, to be assessed by Hickey and Garrett Cost Assessors.

Reasons

The practitioner is charged with fraudulent misappropriation of monies totalling just in excess of \$800,000.00. The practitioner has not disputed the facts set out in the Particulars of Charge and agrees that those facts as alleged would constitute professional misconduct.

The Queensland Law Society has submitted that the behaviour found to have been committed by the practitioner is a fundamental breach of the trust by the practitioner in carrying out of his duties as a solicitor. The behaviour indicates the clear unfitness of the practitioner to practise as a solicitor in this State.

In view of the seriousness of the conduct of the practitioner, and the serious consequences of the conduct to the practitioner's clients, firm and to the profession, the tribunal can only impose one penalty, namely, the removal of the practitioner's name from the Roll of Solicitors.