

## Reasons

The practitioner, Eleanor Marsden, pleaded guilty on 9 November, 1998 in the District Court at Southport in the State of Queensland to the charge of stealing by an agent property exceeding \$5,000.00 in value (Exhibit 2).

By letter dated 19<sup>th</sup> July 1999, addressed to the Clerk of the

Solicitors Complaints Tribunal (Exhibit 3) the practitioner admitted as follows:

*The facts set out in the Notice of Charge are accurate, and therefore I concur that my name should be struck off the Roll of Solicitors of the Supreme Court of Queensland.*

## Solicitors Complaints Tribunal

# In the Matter of Peter John O'Neill

**Case No:** SCT/19  
**Date of Hearing:** 10 August 1999  
**Appearing Before:** Mr J S P O'Keeffe (Chairperson)  
Ms C C Endicott  
Mr G Campbell-Ryder (Lay Member)  
**Penalty:** Strike Off

## Charges

1. In or about May 1996 the solicitor misappropriated the sum of \$233,764.32 held by him on trust for his clients AJH and RJH.

### Particulars

- 1.1 At all material times the solicitor acted for AJH and RJH (the clients).
- 1.2 In or about early May 1996 the clients instructed the solicitor in relation to an advance by them of \$235,000.00 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.
- 1.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 1.4 On 14 May 1996, contrary to and in complete disregard of his clients' instructions and without their knowledge or consent, the solicitor utilised \$233,764.32 of those funds to facilitate the

purchase of the said property by his wife from the said PAN.

- 1.5 The said sum of \$233,764.32 has since been repaid.
2. On or about 14 May 1996 the solicitor falsely represented to his clients AJH and RJH that the sum of \$235,000.00 of their funds made available to him by them for investment had been lent to PAN when in fact they had been made available to the solicitor's wife to facilitate a property purchase by her as the solicitor well knew.

### Particulars

- 2.1 At all material times the solicitor acted for AJH and RJH (the clients).
- 2.2 In or about early May 1996 the clients instructed the solicitor in relation to the advance of \$235,000.00 by them to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.
- 2.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 2.4 On 14 May 1996 contrary to and in complete disregard of the clients' instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 2.5 On or about 14 May 1996 the solicitor prepared or caused to be prepared and sent to his clients an Epitome of Mortgage dated 13 May 1996 which falsely evidenced and represented the

granting of a Bill of Mortgage by PAN to his clients over the Benowa property securing to the clients an advance to PAN of \$235,000.00 when the solicitor well knew that no such advance had been made, no such Bill of Mortgage had been executed by PAN and that the transaction the Epitome of Mortgage purported to evidence was a sham.

3. Between April 1996 and 17 September 1996 the solicitor caused to be prepared, executed and registered in the Queensland Land Registry a bill of mortgage showing PAN as mortgagor and the solicitor's clients AJH and RJH as mortgagees, purporting to secure to his clients an advance of \$235,000.00 by them to PAN when the solicitor well knew that the signature of the mortgagor on the said Bill of Mortgage was not that of PAN, that no such Bill of Mortgage had been executed by PAN, and that the transaction it purported to evidence was a sham.

#### **Particulars**

- 3.1 At all material times the solicitor acted for AJH and RJH (the clients).
- 3.2 In or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000.00 to one PAN for a period at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.
- 3.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 3.4 On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 3.5 On or about 13 September 1996, consequent upon a complaint by his clients to Queensland Law Society that the Bill of Mortgage referred to in particular 3.2 had not been registered, the solicitor caused to be lodged for registration at the Queensland Land Registry a Bill of Mortgage showing PAN as the mortgagor and the solicitor's clients AJH and RJH as the mortgagees purporting to secure to his clients an advance by them to PAN of \$235,000.00.

3.6 At all material times the solicitor knew that the signature of the mortgagor on the said Bill of Mortgage was not that of PAN, that no such Bill of Mortgage had been executed by PAN and that the transaction it purported to evidence was a sham.

4. On or about 20 August 1996 the solicitor misappropriated the sum of \$4,700.00 held by him on trust for his client GRS.

#### **Particulars**

- 4.1 At all material times the solicitor acted for AJH and RJH (the clients). The solicitor also acted for GRS.
- 4.2 In or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000.00 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered Bill of Mortgage over the Benowa property.
- 4.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 4.4 On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 4.5 Notwithstanding the solicitor's failure to carry out his clients' instructions in relation to the advance to PAN, on or about 20 August 1996 the solicitor paid \$4,700.00 to his clients AJH and RJH purportedly as interest received from PAN pursuant to the loan transaction the subject of his client's instructions in paragraph 4.2.
- 4.6 In fact, rather than those monies being paid by PAN, they were paid from trust monies then held by the solicitor on trust for his client GRS which payment was made without his knowledge or consent.
- 4.7 The said sum of \$4,700.00 has not been repaid by the solicitor to GRS.
5. On or about 1 October 1996 the solicitor misappropriated the sum of \$2,350.00 held by him on trust for his client H Pty Ltd.

### Particulars

- 5.1. At all material times the solicitor acted for AJH and RJH (the clients). The solicitor also acted for H Pty Ltd.
- 5.2. In or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000.00 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.
- 5.3. On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 5.4. On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 5.5. Notwithstanding the solicitor's failure to carry out his clients' instructions in relation to the advance to PAN, on or about 1 October 1996 the solicitor paid \$2,350.00 to his clients AJH and RJH purportedly as interest received from PAN pursuant to the loan transaction the subject of his clients' instruction in paragraph 5.2.
- 5.6. In fact, rather than those monies being paid by PAN, they were paid from trust monies then held by the solicitor on trust for his client H Pty Ltd which payment was made without the knowledge or consent of that client.
- 5.7. The said sum of \$2,350.00 has not been repaid by the solicitor to H Pty Ltd.
6. On or about 23 December 1996 the solicitor misappropriated the sum of \$82,745.34 held by him on trust for his clients AB and JM.

### Particulars

- 6.1 At all material times the solicitor acted for AJH and RJH (the clients). The solicitor also acted for AB and JM.
- 6.2 On or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000.00 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar

monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.

- 6.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 6.4 On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 6.5 Notwithstanding the solicitor's failure to carry out his clients' instructions in relation to the advance to PAN, on or about 23 December 1996 the solicitor paid \$82,745.34 to his clients AJH and RJH purportedly as interest (\$7745.34) and part repayment of principal (\$75,000.00) received from PAN pursuant to the loan transaction the subject of his clients' instructions in paragraph 6.2.
- 6.6 In fact, rather than those monies being paid by PAN, they were paid from trust monies then held by the solicitor on trust for his clients AB and JM having been paid to him on 17 December 1996. That payment was made without their knowledge or consent in that the solicitor informed them that the monies were to be used to pay out a genuine mortgage granted by PAN to AJH and RJH which genuine mortgage did not exist.
- 6.7 The said sum of \$82,745.34 was repaid to AB and JM in May 1997.
7. Between 23 December 1996 and 14 February 1997, the solicitor misappropriated \$2,254.66 held by him on trust for AB and JM.

### Particulars

- 7.1 At all material times the solicitor acted for AB and JM (the clients).
- 7.2 As at 23 December 1996 the solicitor held \$2,254.66 on trust for his clients in his general trust account.
- 7.3 In or about 23 December 1996 without the knowledge or authority of his clients, the solicitor drew a cheque for \$2,000.00 on the individual trust ledger account of his clients in favour of S Pty Ltd a company which he then owned and controlled.

- 
- 7.4 On or about 14 February 1997 without the knowledge or authority of his clients, the solicitor drew a further cheque for \$254.66 in favour of S Pty Ltd.
- 7.5 On 1 May 1997 the solicitor repaid the said sum of \$2,254.66 to his clients.
8. On or about 23 December 1996 the solicitor misappropriated the sum of \$100,00.00 held by him on trust on behalf of his client GRS.

#### **Particulars**

- 8.1 At all material times the solicitor acted for AJH and RJH (the clients). The solicitor also acted for GRS.
- 8.2 In or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000.00 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350.00) to be secured by first registered bill of mortgage over the Benowa property.
- 8.3 On 14 May 1996 the clients paid \$390,000.00 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 8.4 On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 8.5 Notwithstanding the solicitor's failure to carry out his clients' instructions in relation to the advance to PAN, on or about 23 December 1996 the solicitor paid \$100,000.00 to his clients AJH and RJH purportedly as part repayment of principal received from PAN pursuant to the loan transaction the subject of his clients' instructions in paragraph 8.2.
- 8.6 In fact, rather than those monies being paid by PAN, they were paid from trust monies then held by the solicitor on trust for his client GRS which payment was made without his knowledge or consent in that the solicitor informed him that the monies were to be used to pay out a genuine mortgage granted by PAN to AJH and RJH which genuine mortgage did not exist.
- 8.7 The said sum of \$100,000.00 was repaid to GRS on 1 May 1997.

9. On or about 23 December 1996 the solicitor misappropriated the sum of \$60,000 belonging to his client GRS.

#### **Particulars**

- 9.1 At all material times the solicitor acted for AJH and RJH (the clients).
- 9.2 In or about early May 1996 the clients instructed the solicitor in relation to the advance by them of \$235,000 to one PAN for a period of one year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$3,329.16 (reducible to \$2,350) to be secured by first registered bill of mortgage over the Benowa property.
- 9.3 On 14 May 1996 the clients paid \$390,000 into the solicitor's general trust account for the purpose, inter alia, of the loan transaction.
- 9.4 On 14 May 1996, contrary to and in complete disregard of those instructions and without the knowledge or consent of his clients, the solicitor utilised \$233,764.32 of those funds to facilitate the purchase of the said property by his wife from the said PAN.
- 9.5 Notwithstanding the solicitor's failure to carry out his clients' instructions in relation to the advance to PAN, on or about 23 December 1996 the solicitor paid \$60,000 to his clients AJH and RJH purportedly as part repayment of capital received from PAN pursuant to the loan transaction the subject of his clients' instructions in paragraph 8.2.
- 9.6 In fact, rather than those moneys being paid by PAN, they were paid from moneys then standing to the credit of his client GRS in an account held by him with Suncorp-Metway Ltd which payment was made without his knowledge or consent in that the solicitor informed him that the monies were to be used to pay out a genuine mortgage granted by PAN to AJH and RJH which genuine mortgage did not exist.
- 9.7 The said sum of \$60,000.00 was repaid to GRS on 1 May 1997.
10. In or about early December 1996 the solicitor falsely represented to his client GRS that the sum of \$160,000 made available by GRS to the solicitor for investment had been lent to PAN when in fact that was not the case which the solicitor well knew.

## Particulars

- 10.1 At all material times the solicitor acted for GRS (the client).
  - 10.2 In or about December 1996 the client instructed the solicitor in relation to the advance of \$160,000 by him to one PAN for a period of 1 year at an interest rate of 17% per annum (reducible to 12% per annum) payable calendar monthly in arrears by monthly payments of \$2,266.66 (reducible to \$1,600) to be secured by first registered bill of mortgage over the Benowa property.
  - 10.3 Between 17 and 20 December 1996 the client paid \$102,471.64 into the solicitor's general trust account for the purpose of the loan transaction.
  - 10.4 As at 23 December 1996 the client had \$60,000 standing to his credit in Suncorp Metway Ltd.
  - 10.5 On 23 December 1996 contrary to, and in complete disregard of his client's instructions and without the knowledge or consent of his client, the solicitor paid the sum of \$160,000 to others of his clients namely AJH and RJH. Of that sum, \$100,000 was paid from the \$102,471.64 then held in trust for his client GRS and \$60,000 was withdrawn from GRS's said account with Suncorp Metway Ltd.
  - 10.6 In or about early December 1996 the solicitor prepared or caused to be prepared and sent to his client an epitome of mortgage which falsely evidenced and represented the granting of a bill of mortgage by PAN to his client securing to the client an advance to PAN of \$160,000 when the solicitor well knew that no such advance had been made, no such bill of mortgage had been executed by PAN and that the transaction the epitome of mortgage purported to evidence was a sham.
11. On or about 20 May 1997 the solicitor misappropriated the sum of \$24,500 belonging to his clients JFR and DR.

## Particulars

- 11.1 At all material times the solicitor acted for JFR and DR ('the clients').
- 11.2 On or about 19 May 1997 the clients paid \$24,500 to the solicitor by bank cheque drawn on the Southport Branch of the National Australia Bank, to be used as an advance by them to EM and BEM to be secured by registered Bill of Mortgage over the Robina property.

11.3 On or about 20 May 1997 contrary to, and in complete disregard of his clients' instructions, the solicitor paid the said sum of \$24,500 into his general trust account to the credit of the individual trust ledger account of another client GRS without the knowledge or consent of the clients.

11.4 The said sum of \$24,500 has not been repaid by the solicitor to JFR and DR but they have been compensated by payment from the Legal Practitioners Fidelity Guarantee Fund.

12. In or about May 1997 the solicitor falsely represented to his clients JFR and DR that the sum of \$24,500 of their funds made available by them for investment had been lent to EM and BEM when in fact they had been paid to the credit of the individual trust ledger account of another of the solicitor's clients GS which the solicitor well knew.

## Particulars

12.1 At all material times the solicitor acted for JFR and DR (the clients).

12.2 On or about 19 May 1997 the clients paid \$24,500 to the solicitor by bank cheque drawn on the Southport Branch of the National Australia Bank, to be used as an advance by them to EM and BM to be secured by registered Bill of Mortgage over the Robina property.

12.3 On or about 20 May 1997 contrary to, and in complete disregard of his clients' instructions, the solicitor paid the said sum of \$24,500 into his trust account to the credit of the individual trust ledger account of another client GS without the knowledge or consent of the clients.

12.4 In or about May 1997 the solicitor prepared or caused to be prepared and sent to his clients an Epitome of Mortgage which falsely evidenced and represented the granting of a Bill of Mortgage by EM and BEM to his clients over the Robina property securing to the clients an advance to EM and BEM of \$24,500 when the solicitor well knew that no such advance had been made, that no such Bill of Mortgage had been executed by EM and BEM and that the transaction the Epitome of Mortgage purported to evidence was a sham.

13. Between 5 November 1996 and 23 June 1997 the solicitor misappropriated trust moneys totalling \$11,016 held by him on trust for his clients KJS and VAS.

## Particulars

- 13.1 At all material times the solicitor acted for KJS and VAS (the clients) and received into his trust account rental income belonging to the clients.
- 13.2 Between 5 November 1996 and 23 June 1997 the solicitor, without the knowledge or consent of his clients, made the following unauthorised payments from trust moneys held by him on their behalf:

Date	Payee	Source of Funds	Amount
05.11.96	S Pty Ltd	SRM	\$1,500.00
05.03.97	ABM and JM	SR 'TR'	\$1,700.00
08.05.97	P J O'N	SRM	\$1,406.00
26.05.97	S Pty Ltd	SRM	\$3,050.00
30.05.97	S Pty Ltd	SRM	\$1,680.00
30.05.97	S Pty Ltd	SR 'TR'	\$1,680.00
<b>Total</b>			<b>\$11,016.00</b>

- 13.3 None of the moneys have been repaid to the clients by the solicitor.

## Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr D G Searles, solicitor of Messrs McCullough Robertson, solicitors.
- (b) For the practitioner:  
The practitioner appeared in person.

## Findings and Orders

### Solicitors Complaints Tribunal

# In the Matter of Paul Henry Clough

**Case No:** SCT/21  
**Date of Hearing:** 18, 19 and 24 August 1999  
**Appearing Before:** Mr T M Treston (Chairperson)  
Ms C C Endicott  
Ms D A Wilson (Lay Member)  
**Penalty:** Suspension – One (1) year

1. The Tribunal orders that the name of the practitioner, Peter John O'Neill, be struck from the Roll of Solicitors of the Supreme Court of Queensland.
2. The Tribunal further orders by consent that Peter John O'Neill pay the Queensland Law Society Inc. the costs of and incidental to these proceedings in an amount fixed by Mr Fred Monsour of Monsour Legal Costs Pty Ltd.
3. The Tribunal further orders by consent that the costs so fixed be paid by Peter John O'Neill to the Queensland Law Society Incorporated by twenty four (24) equal calendar monthly instalments, the first of which is due and payable one calendar month after the costs are so fixed.

## Reasons

The practitioner has admitted the charges set out in the Notice of Charge and the supporting particulars. The practitioner has admitted that he is guilty of professional misconduct.

The Queensland Law Society has submitted that the only appropriate order is a striking off. The practitioner has requested that the Tribunal give favourable consideration to a suspension with conditions.

The charges relate to misappropriation of trust funds, the preparation of Bills of Mortgage which the practitioner knew had not been executed by the Mortgagors and false representations to clients in respect of the purported Bills of Mortgage.

The Tribunal has taken into account the explanation furnished to it by the practitioner from the bar table and his submissions with respect to penalty.

## Charge

1. The practitioner attempted to further the case of his client, Mr S, against X Pty Ltd ("the defendant") in action no. 3743 of 1991 in the Brisbane District Court arising out of an accident in the course of Mr S's employment on or about 10 February 1989 by unfair or dishonest means.

## Particulars

The practitioner drew, executed and caused to be filed