

In the Matter of Tom Partos

Case No: SCT/63
Date of Hearing: 9 April 2002
Appearing Before: Mr P.L. Cooper (Chairperson)
Mr P.J. Mullins
Ms E Jordan (Lay Member)
Penalty: Not to be employed

Charge 1

On 27 February 2001, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee facilitated the misappropriation of \$5,000 of client trust funds.

Particulars

- 1.1 At all material times the employee was employed as a bookkeeper by Jennifer Mary Cheney ('the solicitor') who carried on practice under the name Chelmer Legal Practice ('the firm') and was responsible for the day to day management of the firm's books of account.
- 1.2 On or about 27 February 2001, in the course of his said employment, the employee drew and signed Bank of Queensland Ltd cheque number 2738 in the sum of \$5,000 on the firm's general trust account and deposited it in the firm's general account without the knowledge or authority of the solicitor or any of the clients beneficially entitled to those moneys with the result that there was a deficiency in the firm's general trust account of \$5,000.
- 1.3 Immediately prior to the said payment from the general trust account, the firm's general account was overdrawn by \$4,668.06 and the firm had no overdraft facility in place.
- 1.4 On or about 2 March 2001 a deposit of \$11,552.50 was made to the firm's general account and that same day the employee caused the said sum of \$5,000 referred to in paragraph 1.2 to be repaid from the firm's general account to its general trust account restoring the deficiency of \$5,000.

Charge 2 — Estate EJS Deceased

On or about 5 July 2000, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer

Legal Practice, the employee facilitated the misappropriation of \$12,567.90 of client trust funds.

Particulars

- 2.1 At all material times, Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for VOS ('the client'), the executor and beneficiary of the estate of his late wife EJS in the administration of her estate.
- 2.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 2.3 As at 5 July 2000, there was the sum of \$49,209.25 standing to the credit of the client's individual trust ledger account.
- 2.4 On or about 5 July 2000, the employee caused the sum of \$12,567.90 to be withdrawn from the client's individual trust ledger account by cheque drawn on that account in favour of one JPB.
- 2.5 JPB was in no way connected with the administration of the estate of EJS deceased and was a beneficiary of another unrelated estate of LVC deceased which the solicitor was acting in the administration of around the same time.
- 2.6 The said moneys were withdrawn without the knowledge or authority of the client and constituted misappropriation of those moneys.
- 2.7 The solicitor has not repaid the said sum of \$12,567.90 to the client.

Charge 3 — Estate LVC

On or about 30 November 1999, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee, in breach of s8 of the *Trust Accounts Act 1973*, facilitated the transfer of \$2,500 to be transferred from the client's individual trust ledger account to the firm's general account when Jennifer Mary Cheney was not authorised by law so to do.

Particulars

- 3.1 At all material times Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.

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- 3.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 3.3 As at 30 November 1999, there was the sum of \$15,168.40 standing to the credit of the client's individual trust ledger account.
- 3.4 On or about 30 November 1999, the employee caused to be transferred from the client's individual trust ledger account to the solicitor's general account the sum of \$2,500 in purported payment of legal costs.
- 3.5 At the time of the said transfer, the solicitor had not rendered a bill of costs to her client, and was not authorised by law to effect the transfer.

Charge 4

On or about 6 December 1999, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee facilitated the misappropriation of \$899.50 of client trust funds.

Particulars

- 4.1 At all material times Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 4.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 4.3 As at 6 December 1999, there was the sum of \$12,668.40 standing to the credit of the client's individual trust ledger account.
- 4.4 On 30 June 2000 the solicitor sent to the client an assessment of her legal costs and outlays totalling \$2,600.50 being \$2,545.50 costs and \$55 outlays.
- 4.5 Previously on 30 November 1999 the solicitor had transferred \$2,500 from the client's individual trust ledger account to the solicitor's general account on account of costs and outlays when the solicitor was not entitled to that amount (charge 3), so that upon rendering the assessment of \$2,600.50 on 30 June 2000 the solicitor was then still owed \$100.50 (\$2,600.50 minus \$2,500).
- 4.6 On or about 6 December 1999 the employee caused the sum of \$1,000 to be transferred from the client's individual trust account to the solicitor's general account in purported payment of legal

costs without the knowledge or authority of the client and in circumstances where the solicitor was only entitled to \$100.50.

- 4.7 Of the sum of \$1,000 transferred on 6 December 1999, the sum of \$899.50 (\$1,000 minus \$100.50) constituted misappropriation of client funds.
- 4.8 The solicitor has not repaid the said sum of \$899.50 to her client.

In the alternative to charge 4

Charge 5

On or about 6 December 1999, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee, in breach of s8 of the *Trust Accounts Act* 1973, facilitated the transfer of \$899.50 from the client's individual trust ledger account to the firm's general account when the solicitor was not authorised by law so to do.

Particulars

- 5.1 At all material times Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 5.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 5.3 As at 6 December 1999, there was the sum of \$12,668.40 standing to the credit of the client's individual trust ledger account.
- 5.4 On 30 June 2000 the solicitor sent to the client an assessment of her legal costs and outlays totalling \$2,600.50 being \$2,545.50 costs and \$55 outlays.
- 5.5 Previously on 30 November 1999 the solicitor had transferred \$2,500 from the client's individual trust ledger account to the solicitor's general account on account of costs and outlays when the solicitor was not entitled to that amount (charge 3), so that upon rendering the assessment of \$2,600.50 on 30 June 2000 the solicitor was then still owed \$100.50 (\$2,600.50 minus \$2,500).
- 5.6 On or about 6 December 1999 the employee caused the sum of \$1,000 to be transferred from the client's individual trust account to the solicitor's general account in purported payment of legal costs without the knowledge or authority of the

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client and in circumstances where the solicitor was only entitled to \$100.50.

- 5.7 At the time of the said transfer of the sum of \$1,000, the solicitor had not rendered a bill of costs to her client, and was not otherwise authorised by law to effect the transfer.
- 5.8 The solicitor has not repaid to the client the net amount of \$899.50 overpaid to the solicitor (\$1,000 minus \$100.50).

Charge 6

On or about 30 December 1999 when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer legal practice, the employee facilitated the misappropriation of \$5000 of client trust funds.

Particulars

- 6.1 At all material times Jennifer Mary Cheney (‘the solicitor’) carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 6.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 6.3 As at 30 December 1999, there was the sum of \$11,668.40 standing to the credit of the client’s individual trust ledger account.
- 6.4 On or about 30 December 1999, the employee caused the sum of \$5,000 to be transferred from the client’s individual trust ledger account to the solicitor’s general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was not entitled to the money.
- 6.5 The said transfer constituted misappropriation of client funds.
- 6.6 The solicitor has not repaid the said sum of \$5,000 to her client.

In the alternative to charge 6

Charge 7

On or about 30 December 1999, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee, in breach of s8 of the

Trust Accounts Act 1973 facilitated the transfer of \$5,000 from the client’s individual trust ledger account to the firm’s general account when he was not authorised by law so to do.

Particulars

- 7.1 At all material times, Jennifer Mary Cheney (‘the solicitor’) carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 7.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 7.3 As at 30 December 1999, there was the sum of \$11,668.40 standing to the credit of the client’s individual trust ledger account.
- 7.4 On or about 30 December 1999, the employee caused the sum of \$5,000 to be transferred from the client’s individual trust ledger account to the solicitor’s general account in purported payment of legal costs.
- 7.5 At the time of the said transfer the solicitor had not rendered a bill of costs to her client, had not received an authorisation in writing within s8(1)(c) of the *Trust Accounts Act 1973* and was not otherwise authorised by law to effect the transfer.
- 7.6 The solicitor has not repaid the said sum of \$5,000 to the client.

Charge 8

On or about 28 April 2000 when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee facilitated the misappropriation of \$3,500 of client trust funds.

Particulars

- 8.1 At all material times Jennifer Mary Cheney (‘the solicitor’) carried on practice as Chelmer Legal Practice and acted for one JPB (‘the client’) the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 8.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 8.3 As at 28 April 2000, there was the sum of \$6,668.40 standing to the credit of the client’s individual trust ledger account.

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- 8.4 On or about 28 April 2000, the employee caused the sum of \$3,500 to be transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs without the knowledge or authority of the client and in circumstances where the solicitor was not entitled to the moneys.
- 8.5 The said transfer constituted misappropriation of client funds.
- 8.6 The solicitor has not repaid the said sum of \$3,500 to the client.

In the alternative to charge 8

Charge 9

On or about 28 April 2000 when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee, in breach of s8 of the *Trust Accounts Act 1973*, facilitated the transfer of \$3,500 from the client's individual trust ledger account to the firm's general account when he was not authorised by law so to do.

Particulars

- 9.1 At all material times, Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of LVC deceased in the administration of that estate.
- 9.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 9.3 As at 28 April 2000 there was the sum of \$6,668.40 standing to the credit of the client's individual trust ledger account.
- 9.4 On or about 28 April 2000, the employee caused the sum of \$3,500 to be transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs.
- 9.5 At the time of the said transfer the solicitor had not rendered a bill of costs to her client, had not received an authorisation in writing within s8(1)(c) of the *Trust Accounts Act 1973*, and was not otherwise authorised by law to effect the transfer.
- 9.6 The solicitor has not repaid the said sum of \$3,500 to the client.

Charge 10

On or about 5 July 2000 the employee when employed by Jennifer Mary Cheney solicitor and principal of Chelmer legal practice, facilitated the preparation and forwarding to the firm's client JPB of a trust account statement which the employee knew or ought to have known falsely represented the true state of the client's trust account.

Particulars

- 10.1 At all material times Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one JPB ('the client') the executrix and beneficiary of the estate of RVC deceased in the administration of that estate.
- 10.2 On or about 5 July 2000 the employee caused to be prepared and sent to the client what purported to be a final trust account statement relating to the said estate administration.
- 10.3 The said trust account statement was false in the following respects as the employee knew or ought to have known:
- 10.4 It recorded a payment from the trust account of \$12,567.90 in favour of the client when, in truth, that payment was made from the trust funds of another unrelated matter namely the estate of EJS deceased particulars of which are set forth in relation to charge 2 above and are incorporated in this charge.
- 10.5 There was no record of the withdrawal from the trust account of the following sums purportedly in payment of legal costs:

Date	Amount	Particulars
Withdrawal		
30.11.99	\$ 2,500	See charge 3 above
06.12.99	\$ 1,000	See charges 4 & 5 above
30.12.99	\$ 5,000	See charges 6 & 7 above
28.04.00	<u>\$ 3,500</u>	See charges 8 & 9 above
Total	<u>\$12,000</u>	

Particulars of charges 3, 4, 5, 6, 7, 8 and 9 are incorporated in this charge.

Charge 11 — GJB

On or about 27 October 2000, when employed by Jennifer Mary Cheney, solicitor and principal of

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Chelmer Legal Practice, the employee facilitated the misappropriation of \$1,028.20 of client trust funds.

Particulars

- 11.1 At all material times, Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one GJB ('the client') in the transfer of a property to his wife.
- 11.2 At all material times the employee was employed by the solicitor as a bookkeeper.
- 11.3 On 16 October 2000 the solicitor rendered to the client an account for costs and outlays totalling \$1,028.20 and the following day, 17 October 2000, transferred that sum from the client's individual trust ledger account to the solicitor's general account in payment of that account.
- 11.4 As at 27 October 2000, there was \$2,301.60 standing to the credit of the client's individual trust ledger account.
- 11.5 On 27 October 2000, the employee caused the sum of \$1,028.20 to be again transferred from the client's individual trust ledger account to the solicitor's general account in circumstances where the solicitor was not entitled to the money.
- 11.6 The said transfer constituted misappropriation of client funds.
- 11.7 The solicitor repaid the said sum of \$1,028.20 on 26 April 2001 some 6 months after the original transfer from trust.

In the alternative to charge 11

Charge 12

On or about 27 October 2000, when employed by Jennifer Mary Cheney, solicitor and principal of Chelmer Legal Practice, the employee, in breach of s8 of the *Trust Accounts Act 1973*, caused the sum of \$1,028.20 to be transferred from the client's individual trust ledger account to the firm's general account when he was not authorised by law so to do.

Particulars

- 12.1 At all material times, Jennifer Mary Cheney ('the solicitor') carried on practice as Chelmer Legal Practice and acted for one GJB ('the client') in a transfer of a property to his wife.

- 12.2 On 16 October, 2000 the solicitor rendered to the client an account for costs and outlays totalling \$1,028.20 and the following day, 17 October 2000, transferred that sum from the client's individual trust ledger account to the firm's general account in payment of that account.
- 12.3 As at 27 October 2000 there was \$2,301.60 standing to the credit of the client's individual trust ledger account.
- 12.4 On or about 27 October 2000 the employee caused the sum of \$1,028.20 to be again transferred from the client's individual trust ledger account to the solicitor's general account in purported payment of legal costs.
- 12.5 At the time of the said transfer, the solicitor had not rendered a bill of costs to her client, had not received an authorisation in writing within s8(1)(c) of the *Trust Accounts Act 1973* and was not otherwise authorised by law to effect the transfer.
- 12.6 The solicitor repaid the said sum of \$1,028.20 to the client on 26 April 2001 some 6 months after the original transfer from trust.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D.G. Searles, solicitor of McCullough Robertson Lawyers
- (b) For the employee:
Nil

Findings and Orders

1. The tribunal grants leave to file the affidavit of David John Franklin sworn 9 April 2002
2. The tribunal finds the charges set out in charges 1, 2, 3, 4, 6, 7, 10 and 12 proven. The tribunal finds the charges constitute professional misconduct and that Tom Partos is guilty of professional misconduct
3. The tribunal further orders that as from today a person must not employ Tom Partos in relation to a practitioner's practice except with the consent of the Council of the Queensland Law Society

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- The tribunal further orders that Tom Partos pay the costs of and incidental to this application and the costs of the substituted service application, including the costs of the recorder and the clerk of the tribunal to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

Charges 1, 2, 3, 4, 6 and 8 are all incidences of misappropriation of clients' funds from the trust account. There is a deliberate course of conduct evident in the documents with demonstrated dishonesty which, in the opinion of the tribunal, amounts to professional misconduct.

Charge 10 was the preparation of a false trust account statement delivered with the intention of deceiving the

client, which took place over a considerable period of time which, in the opinion of the tribunal, amounts to professional misconduct.

In relation to charge 11, we were not satisfied to the appropriate standard that the evidence supports the charge.

Charge 12 deals with transfers without a written authority and the tribunal finds the charge is proven and that it amounts to professional misconduct.

Tom Partos was a senior employee and was entrusted with the carriage of the trust account of the practitioner and has fallen short, to a substantial degree, of the standard of professional conduct required and expected of a person in such a position.

The public should be protected from such a person in the same way as the public would expect to be protected from a practitioner who behaves in a similar manner.

In the Matter of Peter Jensen

Case No: SCT/70
Date of Hearing: 30 April 2002
Appearing before: Mr P Cooper (Chairperson)
Mr M Conroy
Ms I Vallin-Thorpe (Lay Member)
Penalty: Struck off

Charge 1 — GL & CRL sale to J

On or about 25 June 2001, when acting for GL & CRL in a sale to J, the solicitor misappropriated \$105,645.41 of client funds.

Particulars

- At all material times the solicitor was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for GL & CRL ('the clients') in the sale of Unit 4, Sapphire Place, 13 Christina Court, Mermaid Waters, Queensland to one J.
- On settlement of the said sale transaction on 25 June 2001, the solicitor received on behalf of his clients a bank cheque for \$105,645.41 drawn in favour of the firm.

- That same dated, 25 June 2001 without the knowledge or authority of his client, the solicitor deposited the said bank cheque for \$105,645.41 into his personal account no. 15-6014 conducted by him with Westpac Banking Corporation Bundall, Queensland.
- The said moneys were never paid to the clients but rather were utilised for the solicitors own purposes and constituted a misappropriation of client funds.
- The sum of \$500 has been repaid by the solicitor to the client and the balance of \$105,145.41 was paid from the Legal Practitioners Fidelity Guarantee Fund.

Charge 2 — GMK sale to V

On or about 19 July 2001, when acting form GMK in relation to a sale to V, the solicitor misappropriated \$42,031.25 of client funds.

Particulars

- At all material times the solicitors was the principal of Jensens Solicitors ('the firm') of 130 Bundall Road, Bundall, Queensland and acted for Gwendoline Margaret Kent ('the client') in relation to the sale by her of 20 Canterbury Chase, Ashmore, Queensland