

## The Solicitors Complaints Tribunal

4. The tribunal finds the practitioner guilty of professional misconduct.
5. The tribunal orders that the practitioner pay a penalty of \$5,000.00 to the fund, such amount to be paid by no later than 6 May 2001.
6. The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Inc of and incidental to these proceedings, as agreed between the parties, and failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.

### Reasons

The practitioner has been charged with charging excessive fees for the provision of legal services. The original charge as amended by consent and during the adjourned hearing today, the solicitor for the Queensland Law Society Incorporated obtained leave to add an alternate charge with the consent of Counsel for the practitioner.

The charges are encapsulated in bills delivered in taxable form which were requested by the solicitors for MM, the client, after the amount originally billed by the practitioner (\$125,000.00) was disputed. There is argument as to whether the charges properly relate to the work encompassed by the original account dated 28<sup>th</sup> June 1996 (Exhibit 2) or for a larger amount set out in paragraph (b) of the charge.

There is no evidence before the tribunal that persuades us to find that the practitioner was seeking payment of an amount greater than the \$125,000.00. However, on the view which we take, this is of little consequence, as counsel for the practitioner has conceded that the practitioner did charge excessive fees on delivery of the bill for \$125,000.00 dated 28 June 1996 (Exhibit 2) and, furthermore, that this constitutes professional misconduct.

In considering penalty, the tribunal has taken into account that the practitioner has already suffered substantial monetary loss in the writing off of disbursements and professional time to the extent of approximately \$88,000.00.

## In the Matter of Practitioner X

**Case No:** SCT/40  
**Date of hearing:** 6 and 7 March 2001  
**Appearing before:** Mr G C Fox (Chairperson)  
Mr P Martinez  
Mr G Campbell-Ryder (Lay Member)  
**Penalty:** Fined \$30,000.00

### Charges

1. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, namely clients' trust monies, dealt with that property in breach of the terms of the trust and in breach of s.8 of the *Trust Accounts Act* by, without authority, intermingling the property with his own property, and thereby applied the same to his own use and benefit.

#### Particulars

- (a) (i) On 4 September 1997 the practitioner withdrew the sum of \$12,000.00 initially the property of diverse unidentified clients, and from 5 September 1997 the property of his client IB from the trust account to the general account without having any lawful entitlement thereto;
- (ii) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use;

- (iii) On 28 November 1997 the practitioner withdrew the sum of \$5,446.62 the property of his client IB from the trust account to the general account without having any lawful entitlement thereto;
- (iv) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use.
- (b) (i) On 9 January 1998 the practitioner withdrew the sum of \$25,000.00 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;
- (ii) The said monies were thereby mixed with the practitioners own money and applied to the practitioners own use;
- (iii) On 15 May 1998 the practitioner withdrew the sum of \$197.50 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;
- (iv) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use;
- (v) On 13 August 1998 the practitioner withdrew the sum of \$10,000.00 the property of his client GM from the trust account to the general account without having any lawful entitlement thereto;

- (vi) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use.
  - (c) (i) On 14 July 1998 the practitioner withdrew the sum of \$15,000.00 the property of his client WB from the trust account to the general account without having any lawful entitlement thereto;
  - (ii) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use;
  - (d) (i) On 11 May 1999 the practitioner withdrew the sum of \$580.38 the property of his client GRF from his trust account to his general account without having any lawful entitlement thereto;
  - (ii) The said monies were thereby mixed with the practitioners own monies and applied to the practitioners own use.
  - (e) (i) On 28 August 1998 the practitioner withdrew the sum of \$5,000 the property of his client Mrs MED from the trust account to the general account without having any lawful entitlement thereto;
  - (ii) The said moneys were thereby mixed with the practitioners own moneys and applied to the practitioners own use;
  - (f) (i) On 21 December 1998 the practitioner withdrew the sum of \$14,250 the property of his client Mr PMD from the trust account to the general account without having any lawful entitlement thereto;
  - (ii) The said moneys were thereby mixed with the practitioners own moneys and applied to the practitioners own use.
2. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property did, during the period of February 1999 to June 1999, in the various respects particularised hereunder, engage in breaches of the *Trust Accounts Regulations 1973* and/or the *Trust Accounts Regulation 1999*.

**Particulars**

- (a) During the period from 1 February 1999 to 24 June 1999, in breach of reg.5(a) of the *Trust Accounts Regulations 1973* the practitioner failed to issue, or cause to be issued, either forthwith or at all, receipts in respect of deposits to the trust bank account.

- (b) During the period from 1 February 1999 to 24 June 1999, in breach of regs.5(c) and 5(d) of the *Trust Accounts Regulations 1973* (and from 25 June 1999 to 30 June 1999, in breach of ss.11(1) and 15 of the *Trust Accounts Regulation 1999*) the practitioner failed to record, or cause to be recorded, either forthwith or at all, in the trust account cash book and trust account ledger, particulars of monies received and particulars of monies paid.
  - (c) During the period from February 1999 to May 1999, in breach of reg.5(c) of the *Trust Accounts Regulations 1973* (and in June 1999 in breach of s.12(1) of the *Trust Accounts Regulation 1999*) the practitioner failed, at the end of every month, to reconcile the trust account cash book with the bank balance and the trust account ledger.
3. That the practitioner is guilty of professional misconduct, or alternatively unprofessional conduct or practice, in that in breach of s.5H(1) of the *Queensland Law Society Act*, he failed in the respects particularised below to comply with a Council requirement to give the Council in writing within a stated reasonable time an explanation of a matter being investigated, or alternatively failed in the respects particularised below, to produce to the Council within a stated reasonable time a document in his custody, possession or control.

**Particulars**

- (a) In connection with the matter of the investigation of a complaint by WB
  - (i) by letter dated 15 April 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from WB, by 7 May 1999. No response was received from the practitioner within the time specified;
  - (ii) by letter dated 12 May 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 15 April 1999, requested the practitioner to provide his response by 19 May 1999. No reply was received from the practitioner within the time specified;
  - (iii) by letter dated 13 September 1999 the Council, by its Director - Professional Standards, being duly authorised in that regard, requested the practitioner to

- provide a response to certain enquiries concerning the matter of the investigation of the complaint by B. Having received no reply from the practitioner to its said letter of 13 September 1999, by letter dated 7 October 1999, the Council by its Director, Professional Standards, being duly authorised in that regard, requested the practitioner to furnish a reply within 7 days of 7 October 1999. No reply was received from the practitioner within the time specified;
- (iv) by letter dated 17 December 1999 the Council, by its Solicitor - Professional Standards, being duly authorised in that regard, and having received no reply to its aforesaid letter of 7 October 1999 requested the practitioner to provide a reply within 7 days of 17 December 1999. Although a reply was received from the practitioner dated 24 December 1999 the reply failed to give an explanation of the matters the subject of the Council's investigation, being the matters set out in the aforesaid letter of 13 September 1999;
- (v) by letter dated 11 January 2000 the Council, by its Secretary, being duly authorised in that regard, and having received no satisfactory explanation of the matter being investigated, requested the practitioner to provide a response by 17 January 2000. No reply was received from the practitioner within the time specified.
- (b) In connection with the matter of the investigation of a complaint by GM
- (i) by letter dated 30 October 1998 the Council, by its Secretary, being duly authorised in that regard requested the practitioner to provide a response to certain enquiries pertaining to the investigation of a complaint received by the Society from GM. By letter dated 13 November 1998 Messrs P & Co advised the Society that the matters raised by the Society's letter of 30 October 1998 were being addressed by the practitioner, who expected to reply in the near future;
- (ii) by letter dated 2 December 1998, the Council, by its Secretary, being duly authorised in that regard, and having received no reply from the practitioner to its aforesaid letter of 30 October 1998, requested the practitioner to provide a reply to the letter of 30 October 1998 by 11 December 1998. No reply was received from the practitioner within the time specified;
- (iii) by letter dated 15 December 1998, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letters of 30 October 1998 and 2 December 1998, requested the practitioner to provide a response by 4 January 1999. The practitioner requested, and was granted an extension of time to 18 January 1999 to address the issues which had been raised with the practitioner. No reply was received from the practitioner within the extended time specified;
- (iv) by letter dated 26 March 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward certain documents pertaining to the investigation of the complaint by M, by 31 March 1999. No reply was received from the practitioner within the time specified;
- (v) by letter dated 1 April 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 26 March 1999, requested the practitioner to provide a response by 7 April 1999. No reply was received from the practitioner within the time specified;
- (vi) by letter dated 4 June 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to provide a response to certain enquiries pertaining to the investigation of the complaint of M, by 25 June 1999. No reply was received from the practitioner within the time specified;
- (vii) by letter dated 25 January 2000, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to provide a response to further enquiries in the matter of the investigation of the complaint by M, by 4 February 2000. No reply was received from the practitioner within the time specified.
- (c) In connection with the matter of the investigation of a complaint by Dr AP
- (i) by letter dated 28 May 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written

- explanation of the matters referred to in a letter of complaint received by the Society from Dr AP, by 18 June 1999. No reply was received from the practitioner within the time specified;
- (ii) by letter dated 24 September 1999, the Council by its Director – Professional Standards, being duly authorised in that regard, requested the practitioner to advise the present position concerning the matter of the complaint by Dr P within 7 days. No reply was received from the practitioner within the time specified;
  - (iii) by letter dated 17 December 1999, the Council, by its Solicitor - Professional Standards, being duly authorised in that regard, and having received no reply to its aforesaid letter of 24 September 1999, requested the practitioner to provide a reply within 7 days. No reply was received from the practitioner within the time specified;
  - (iv) by letter dated 11 January 2000, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letters of 24 September 1999 and 17 December 1999, requested the practitioner's response by 17 January 2000. No reply was received from the practitioner within the time specified.
- (d) In connection with the matter of the investigation of a complaint by M on behalf of BMF
- (i) by letter dated 19 May 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from Messrs M on behalf of B M F by 10 June 1999. No reply was received from the practitioner within the time specified;
  - (ii) by letter dated 11 June 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 19 May 1999, requested the practitioner to provide a response by 21 June 1999. No reply was received from the practitioner within the time specified.
- (e) In connection with the matter of the investigation of a complaint by MR on behalf of C & Others
- (i) by letter dated 12 May 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from Messrs MR on behalf of Mr & Mrs C and others by 4 June 1999. No reply was received from the practitioner within the time specified;
  - (ii) by letter dated 7 June 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 12 May 1999, or to a subsequent letter to the practitioner of 2 June 1999, requested the practitioner to provide a response by 11 June 1999. No reply was received from the practitioner within the time specified;
  - (iii) by letter dated 24 September 1999, the Council, by its Director – Professional Standards, being duly authorised in that regard, requested the practitioner to provide a reply with respect to certain further enquiries pertaining to the investigation of the complaint on behalf of Mr & Mrs C, within 7 days. No reply was received from the practitioner within the time specified;
  - (iv) by letter dated 17 December 1999, the Council, by its Solicitor – Professional Standards, being duly authorised in that regard, and having received no reply to its aforesaid letter of 24 September 1999, requested the practitioner to provide a reply within 7 days. No reply was received from the practitioner within the time specified;
  - (v) by letter dated 11 January 2000, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letters of 24 September 1999 and 17 December 1999 requested the practitioner to provide a reply by 17 January 2000. No reply was received from the practitioner within the time specified.
- (f) In connection with the matter of the investigation of a complaint by W & Partners on behalf of GJL
- (i) by letter dated 10 May 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from Messrs W & Partners on behalf of GJL, by 7 June 1999. No reply was

- received from the practitioner within the time specified;
- (ii) by letter dated 8 June 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 10 May 1999, or to a subsequent letter of 21 May 1999, requested the practitioner to provide a response by 14 June 1999. No reply was received from the practitioner within the time specified;
  - (iii) by letter dated 17 December 1999, the Council, by its Solicitor – Professional Standards, being duly authorised in that regard, requested the practitioner to advise the present position in relation to the matter of the investigation of the complaint by W & Partners on behalf of L within 14 days. No reply was received from the practitioner within the time specified.
- (g) In the matter of the investigation of a complaint by KLH & Associates on behalf of RM
- (i) by letter dated 22 February 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to forward a sufficient and satisfactory written explanation of the matters referred to in a letter of complaint received by the Society from KH & Associates on behalf of RM, by 15 March 1999. No reply was received from the practitioner within the time specified;
  - (ii) by letter dated 16 March 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 22 February 1999, requested the practitioner to provide a response by 22 March 1999. No reply was received from the practitioner within the time specified;
  - (iii) by letter dated 19 April 1999, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to provide a written response to certain further enquiries pertaining to the investigation of the complaint by KH on behalf of M, within 14 days. No reply was received from the practitioner within the time specified;
  - (iv) by letter dated 7 May 1999, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 19 April 1999, requested the practitioner to provide his response by 12 May 1999. No reply was received from the practitioner within the time specified;
  - (v) by letter dated 17 December 1999, the Council, by its Solicitor – Professional Standards, being duly authorised in that regard, forwarded to the practitioner a copy of a letter dated 14 December 1999 received from the complainant pertaining to the matter of the said complainant and requested the practitioner to advise the present position within 7 days. No reply was received from the practitioner within the time specified;
  - (vi) by letter dated 11 January 2000, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its letter of 17 December 1999, requested the practitioner to provide his response by 17 January 2000. No reply was received from the practitioner within the time specified.
- (h) In connection with the matter of the investigation of a complaint by PMD and MED
- (i) by letter dated 11 February 2000, the Council, by its Secretary, being duly authorised in that regard, requested the practitioner to provide a response to certain enquiries concerning the matter of the investigation of the complaint by Mr and Mrs D, and to produce copies of certain documents by 22 February 2000. No response was received from the practitioner within the time specified;
  - (ii) by letter dated 25 February 2000, the Council, by its Secretary, being duly authorised in that regard, and having received no reply to its aforesaid letter of 11 February 2000, requested the practitioner to provide his response by 3 March 2000. By letter dated 17 March 2000, the Council, by its Secretary, being duly authorised in that regard, granted the practitioner an extension of time to 27 March 2000 in which to provide his response. No reply was received from the practitioner within the time specified.
4. That the practitioner is guilty of professional misconduct in that, in the respects particularised below, he failed to comply with a notice given by the Council under s.5H(2) of the *Queensland Law*

*Society Act*, for a period of 14 days after the giving of the notice.

**Particulars**

- (a) In connection with the matter of the investigation of a complaint by WB
  - (i) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 25 May 1999;
  - (ii) the practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto;
  - (iii) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a further written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 28 January 2000;
  - (iv) by letter dated 11 February 2000, and received by the Society by facsimile that day, the practitioner replied to the aforesaid notice of 28 January 2000. By that letter the practitioner failed to furnish an explanation of the matter the subject of the said notice.
- (b) In connection with the matter of the investigation of a complaint by GM
  - (i) the Council, by its Deputy-Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 20 January 1999;
  - (ii) by letter dated 3 February 1999, the Council, by its Secretary, granted the practitioner an extension of time until 5 February 1999 in which to comply with the said notice;
  - (iii) by letter dated 5 February 1999, and received by the Society by facsimile that day, the practitioner replied to the aforesaid notice of 20 January 1999. By that letter, the practitioner failed to furnish an explanation of the matter being investigated;
  - (iv) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a further written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 23 June 1999;
  - (v) the practitioner failed, within the 14 day period specified in the notice to furnish a reply thereto.

- (c) In connection with the matter of the investigation of a complaint by Dr AP
  - (i) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 28 January 2000;
  - (ii) by letter dated 11 February 2000 and received by the Society by facsimile that day, the practitioner replied to the aforesaid notice of 28 January 2000. By that letter the practitioner failed to furnish an explanation of the matter the subject of the said notice.
- (d) In the matter of the investigation of a complaint by M on behalf of BMF
  - (i) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 23 June 1999;
  - (ii) the practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto.
- (e) In connection with the matter of the investigation of a complaint by MR on behalf of C & Others
  - (i) the Council, by its Deputy-Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 15 June 1999;
  - (ii) the practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto;
  - (iii) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a further written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 28 January 2000;
  - (iv) by letter dated 11 February 2000 and received by the Society by facsimile that day the practitioner replied to the aforesaid notice of 28 January 2000. By that letter the practitioner failed to furnish an explanation of the matter the subject of the said notice.
- (f) In connection with the matter of the investigation of a complaint by W & Partners on behalf of GL
  - (i) the Council, by its Deputy-Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance

- with s.5H(2) of the *Queensland Law Society Act* on 15 June 1999;
- (ii) the practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto.
- (f) In connection with the matter of the investigation of a complaint by KLH & Associates on behalf of RM
- (i) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 18 May 1999;
  - (ii) the practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto;
  - (iii) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a further written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 28 January 2000;
  - (iv) by letter dated 11 February 2000 and received by the Society by facsimile that day the practitioner replied to the aforesaid notice of 28 January 2000. By that letter the practitioner failed to furnish an explanation of the matter the subject of the said notice.
- (g) In connection with the matter of the investigation of a complaint by PMD and MED
- (i) the Council, by its Secretary, being duly authorised in that regard, gave the practitioner a written notice in accordance with s.5H(2) of the *Queensland Law Society Act* on 5 April 2000;
  - (ii) the practitioner replied to the Society by letter dated 18 April 2000, received by the Society by facsimile that day. By that letter the practitioner failed to furnish an explanation of the matters the subject of the said notice, and the practitioner otherwise failed to comply with the said notice within the specified period of 14 days.
5. That the practitioner is guilty of unprofessional conduct or practice, in that, in relation to the conduct of his practice:
- (i) He has been guilty of undue delay; and/or
  - (ii) He has been guilty of a failure to maintain reasonable standards of competence or diligence.

**Particulars**

- (a) In the matter of a complaint by WB:
- (i) the practitioner was responsible for undue delay in finalising the matter of a personal injuries claim conducted on behalf of Mr B;
  - (ii) the practitioner failed to diligently provide an accounting to Mr B of dealings with the proceeds of the said claim, and failed to diligently account to the client for funds in the sum of \$14,509.78 retained in the trust account between 8 December 1998 and 22 December 1999;
  - (iii) the practitioner failed to invest, or alternatively seek instructions to invest the trust funds referred to in paragraph (ii) above;
  - (iv) the practitioner failed or refused to respond to telephone calls received from his client and otherwise failed to keep his client sufficiently informed in relation to the matter.
- (b) In relation to the matter of a complaint by GM:
- (i) the practitioner was responsible for undue delay in finalising the matter of a personal injuries claim conducted on behalf of Mr M;
  - (ii) the practitioner was responsible for undue delay in the conduct of the matter of a motor vehicle property damage claim on behalf of Mr M;
  - (iii) the practitioner failed to diligently provide an accounting to Mr M of dealings with the proceeds of the said personal injuries claim, and failed to diligently account to the client for funds in the sum of \$17,082.35 retained in the trust account between 13 August 1998 and 5 February 1999;
  - (iv) the practitioner failed to invest, or alternatively seek instructions to invest the trust funds referred to in paragraph (iii) above;
  - (v) the practitioner failed or refused to respond in a timely manner to correspondence and telephone calls received on behalf of his client regarding the furnishing by the practitioner of an itemised bill of costs.
- (c) In the matter of a complaint by Dr A P:
- (i) the practitioner was responsible for undue delay in the handling of the matter of the lodgment of the client's 1998 tax return;
  - (ii) the practitioner failed or refused to respond to e-mails, correspondence and

- telephone calls received from his client, and otherwise failed to keep his client sufficiently informed in relation to the matter.
- (d) In the matter of a complaint by Messrs MR on behalf of Carroll and others:
- (i) the practitioner failed or refused to respond to correspondence and telephone calls received from, or on behalf of, his clients, concerning a request for the delivery up by the practitioner of the client's documents.
- (e) In the matter of a complaint by W & Partners on behalf of GL:
- (i) the practitioner was responsible for undue delay with respect to the raising of his account for professional services rendered during the period July-September 1998, such account having been first rendered in August 1999 and thereupon relied on by the practitioner for the exercise of a solicitor's lien over certain of the client's files, delivery up of which had been requested on behalf of the client in April 1999;
  - (ii) the practitioner failed or refused to respond to correspondence received on behalf of his client concerning a request for delivery up by the practitioner of the client's said files.
- (f) In the matter of a complaint by KLH on behalf of RM:
- (i) the practitioner was responsible for undue delay in reporting to the solicitors for Mrs M on the outcome of the sale of the former matrimonial home of Mr & Mrs M, in respect of which transaction the practitioner acted for Mr M and as trustee for sale;
  - (ii) the practitioner failed to diligently provide an accounting to the solicitors for Mrs M of dealings with the proceeds of sale;
  - (iii) the practitioner failed or refused to receive, or alternatively to respond to telephone calls and correspondence received from the solicitors for Mrs M, or to otherwise keep them sufficiently informed in relation to the matter.
- (g) In connection with the matter of T:
- (i) the practitioner was responsible for delay in finalising the matter of a personal injuries claim conducted on behalf of T;
  - (ii) the practitioner failed to diligently provide an accounting to T of dealings with the proceeds of the said claim and failed to diligently account to the client for funds in the sum of \$8,319.17 retained in the trust account between 15 October 1998 and some presently unidentifiable date after July 1999;
- (iii) the practitioner failed to invest, or alternatively seek instructions to invest the said trust funds referred to in paragraph (ii) above.
- (h) In connection with the matter of A:
- (i) the practitioner was responsible for delay in finalising the matter of a personal injuries claim conducted on behalf of A;
  - (ii) the practitioner failed to diligently provide an accounting to A of dealings with the proceeds of the said claim and failed to diligently account to the client for funds in the sum of \$7,196.05 retained in the trust account between 14 July 1998 and some presently unidentifiable date after July 1999;
  - (iii) the practitioner failed to invest, or alternatively seek instructions to invest the said trust funds referred to in paragraph (ii) above.
- (i) in connection with the matter of C:
- (i) the practitioner was responsible for delay in finalising the matter of a personal injuries claim conducted on behalf of C;
  - (ii) the practitioner failed to diligently provide an accounting to C of dealings with the proceeds of the said claim and failed to diligently account to the client for funds in the sum of \$4,815.65 retained in the trust account between 22 September 1998 and some presently unidentifiable date after July 1999;
  - (iii) the practitioner failed to invest, or alternatively seek instructions to invest the said trust funds referred to in paragraph (ii) above.
6. That the practitioner is guilty of professional misconduct, or alternatively unprofessional conduct or practice in that the practitioner did, by letters dated 12 February 1999 and 26 August 1999 respectively, write to the Queensland Law Society Inc ("the Society") concerning the Society's investigation of the matter of the complaint against him by G M, which letters contained representations which were, as the practitioner well knew, false or misleading.

**Particulars**

- (a) During the course of correspondence between the Society and the practitioner concerning the



Society's investigation of the matter of the complaint against the practitioner by G M, the practitioner wrote to the Society a letter dated 12 February 1999.

(b) By that letter the practitioner informed the Society, inter alia:

- (i) that the matter of a motor vehicle property damage claim being conducted by the practitioner on behalf of Mr M remained outstanding;
- (ii) that there remained to be resolved issues relating to the quantum of the client's property damage claim and relating to legal costs occasioned in consequence of the conduct of the matter by the client's insurer;
- (iii) that it may also be necessary to join Suncorp (General) Insurance as a party to the action as it may have acted without the client's authority in its conduct of the matter and may have thereby compromised his rights;
- (iv) that the practitioner had therefore retained moneys in trust for the prospect of a trial of the property damage claim or for a claim against Suncorp (General) Insurance for a breach of its obligations.

(c) The practitioner thereby represented to the Society to that effect that as at 12 February 1999 the matter of the motor vehicle property damage claim remained on foot as to a number of issues and that the practitioner had retained clients trust funds on account of the prospect of the costs of a trial of the matter and/or a claim against Suncorp (General) Insurance.

(d) The said letter was false or misleading as in truth the practitioner had been instructed by the said client by letter dated 6 January 1999 that as he (the practitioner) had failed to follow instructions, the said client had arranged to settle the matter with Suncorp personally, and that the practitioner was to have no further involvement in the matter.

(e) By letter dated 26 August 1999 the practitioner again wrote to the Society concerning the matter of the investigation of the complaint by G M, and the matter of the said motor vehicle property damage claim stating, inter alia:

"3. I wrote to you on 12 February... You were aware that at that time, the property claim had not been completed and it looked likely that this aspect to the dispute would have to proceed to Court. In this instance, the claim had actually been referred to the Magistrates Court. Accordingly, until such time as the

property claim was completed, it was inappropriate to make a full account to Mr M. The moneys held were held on account of work undertaken and services rendered as well as anticipated costs and outlays should the property dispute proceed to Court".

(f) The said letter was false or misleading as in truth the practitioner had been instructed by the said client by letter dated 6 January 1999 that as he (the practitioner) had failed to follow instructions, the said client had arranged to settle the matter with Suncorp personally, and that the practitioner was to have no further involvement in the matter.

(g) By his said letter of 12 February 1999, the practitioner also stated, in response to a complaint that he had failed to explain his delay in finalising the matter of the client's personal injuries claim:

"2. The recovery of costs also took many months to finalise because of delays within the office of the cost assessor. This was something which was beyond our control. We received a sum of \$27,082.35 on 13 August 1998 on account of agreed costs on a party/party basis from the defendants' solicitors. This payment was only received after we had negotiated at length with the defendants' solicitors about the costs. The certificate issued by Monsour Legal Costs Pty Ltd was not accepted without question by the defendants' solicitors".

(h) The said statements were false or misleading as in truth:

- (i) the practitioner had not negotiated at length with the defendants' solicitors about the costs; and
- (ii) the certificate issued by Monsour Legal Costs Pty Ltd had been accepted without question by the defendants' solicitors.

(i) By letter dated 26 August 1999 the practitioner wrote to the Society, during the course of the Society's investigation of the matter of the complaint against the practitioner by GM, stating:

"I enclose for your information a copy of interim memoranda of fees. The original of each of these was forwarded by mail to Mr M...".

(i) The said letter enclosed copies of:

- (i) an interim fee note dated 9 January 1998 in the sum of \$25,000.00;
- (ii) an interim fee note dated 15 May 1998 in the sum of \$197.50;

(iii) an interim fee note dated 13 August 1998 in the sum of \$10,000.00.

(k) The said statements were false and misleading as in truth the original of each interim memorandum of fees had not been forwarded to Mr M.

7. In the alternative to charge 6, the practitioner is guilty of professional misconduct or, alternatively, unprofessional conduct or practice in that the practitioner did, by letters dated 12 February 1999 and 26 August 1999 respectively, write to the Queensland Law Society Inc ("the Society") concerning the Society's investigation of the matter of the complaint against him by GM, which letters contained representations which were recklessly made, uncaring as to their accuracy.

#### Particulars

The Society repeats and relies upon particulars (a) – (k) of charge 6 above.

8. That the practitioner is guilty of professional misconduct, or alternatively unprofessional conduct or practice in that the practitioner:

(a) In breach of his duty as a solicitor; and/or  
(b) In breach of his duty to maintain reasonable standards of competence or diligence;

has failed, within a reasonable time after being requested in writing by his client to do so, to render to the client a bill of costs covering all work for that client to which such request related.

#### Particulars

(a) By letter dated 24 February 1999, Messrs PR, solicitors, for and on behalf of Mr GM, a client of the practitioner, requested that the practitioner provide an itemised bill of costs in taxable form in relation to all work undertaken by the practitioner's firm in relation to the personal injuries and property damage components of Mr M's motor vehicle accident claim.

(b) Subsequent to 24 February 1999, Messrs PR have requested, on various diverse occasions, that the practitioner provide an itemised bill of costs in relation to the matter.

(c) Notwithstanding such requests, the practitioner has failed or refused to render a bill of costs in respect of work undertaken for Mr M, to which such requests related.

9. That the practitioner is guilty of professional misconduct or, alternatively, unprofessional conduct or practice in that the practitioner did, in the matter of Mr GM re Personal Injuries Claim, charge excessive fees for the provision of services in relation to the practitioner's practice.

#### Particulars

In the matter of Mr GM re Personal Injuries Claim, the practitioner, as solicitor for Mr M, did, on 1 February 1999, render a memorandum of costs charging professional fees in the sum of \$43,000.00;

The practitioner caused the transfer of client funds in the sum of \$43,000.00 from his trust account in payment of the said fees;

The said sum of \$43,000.00 was charged in circumstances where a reasonable sum for professional fees for the services rendered by the practitioner in relation to the matter of the personal injuries claim was substantially less than \$43,000.00.

#### Appearances

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

Mr RG Perrett, solicitor of Clayton Utz, solicitors

(b) For the practitioner:

DLK Atkinson of counsel

(c) For the complainant:

Nil

#### Findings and Orders

The tribunal grants leave to amend the Amended Notice of Charge in the following manner:

Charge 5(a)(i) by adding the words "in that" together with all the words formerly in subparagraph (a)(ii);

Charge 5(a)(iii) by deleting "(ii)" and substituting "(i)";

Charge 5(b)(i) by adding the words "in that" to the end of that paragraph and all the words formerly in subparagraph b(iii);

Charge 5(b)(iv) by deleting "(iii)" and substituting "(i)";

Charge 5(g)(i) by adding the words "in that" together with all the words formerly in subparagraph (g)(ii);

Charge 5(g)(iii) by deleting "(ii)" and substituting "(i)";

Charge 5(h)(i) by adding the words "in that" together with all the words formerly in subparagraph (h)(ii);

Charge 5(h)(iii) by deleting "(ii)" and substituting "(i)";

Charge 5(i)(i) by adding the words "in that" together with all the words formerly in subparagraph (i)(ii);

Charge 5(l)(iii) by deleting "(ii)" and substituting with "(i)".

In charge 7 by adding at the end the words "or alternatively which were carelessly made".

The tribunal finds the facts alleged in Charges 1(b) – (f) inclusive, 2, 3, 4, 5(a)(i), 5 (b) (i), 5(b)(ii), 5(b)(v), 5(d), 5(e),

## The Solicitors Complaints Tribunal

5(f), 5(g)(i), 5(h)(i), 5(i)(i) and 8 proved. In charges 5 and 8, the tribunal finds the practitioner guilty both of undue delay and a failure to maintain a reasonable standard of competence or diligence. The tribunal finds that the matters alleged in charges 7(i), 7(j) and 7(k) proved in that the letters contained representations which were carelessly made.

Given the charges proved the tribunal finds the practitioner guilty of professional misconduct.

The tribunal orders that the practitioner pay a penalty to the fund in the sum of \$30,000.00.

The tribunal further orders that the practitioner make all his files and client records available to a solicitor nominated by the Director of Professional Standards of the Queensland Law Society Incorporated, at the cost of the practitioner, at least 4 times in the next 2 years, that person to report to the Queensland Law Society Incorporated.

The tribunal further orders that the practitioner attend the next available trust account segment of the Practice Management Course conducted or approved by the Queensland Law Society Incorporated.

The tribunal accepts the practitioner's undertaking to provide an itemised bill of costs to the complainant, Mr M, within 7 days, and to all other complainants in these proceedings within 7 days upon request by them.

The tribunal further accepts the practitioner's undertaking within 7 days, to account to Mr C for the funds held on behalf of that client in trust.

The tribunal further orders that the practitioner pay to the Society 90% of the costs of the Queensland Law Society Incorporated as agreed or failing agreement as assessed by James McLellan, costs assessor.

The tribunal further orders that the practitioner pay the penalty of \$30,000.00 at the rate of \$2,000.00 per month, commencing in April 2001, until paid.

### Reasons

The practitioner has been charged with a number of counts and we will deal with those in the order set out in the Amended Notice of Charge.

Charge 1 (a) is not pressed by the Society and accordingly, we do not deal with that.

The practitioner has pleaded guilty to charges 1 (b), (c), (d), (e) and (f) and we find those charges proved.

The practitioner has pleaded guilty to charge 2 and we find that charge proved.

The practitioner has pleaded guilty to charge 3 and we find that charge proved.

The practitioner has pleaded guilty to charge 4 and we find that charge proved.

The practitioner has pleaded guilty to the charge set out in paragraph 5(a)(i) and we find that charge proved.

In relation to charge 5(a)(iii) alleging failure to invest, we find that charge not proved. In the circumstances we cannot find there was any particular point in time where the practitioner rationally should have invested these funds. The problem arises not from his failure to invest, but from his failure to prosecute the actions diligently and any lack of income is a consequence of that delay, not as a consequence of a rational failure to invest at the particular time.

In relation to charge 5(a)(iv) the practitioner pleaded guilty to and we find that charge proved.

In relation to 5(b)(i), we find the charge proved. Various reasons were given for the delay. None of those reasons were sufficient to negate the instructions that were provided. The practitioner had a responsibility to proceed at all times in accordance with this instruction until either the client or the practitioner severed the relationship. We find nothing in the reasons given to justify the delay in finalising the personal injuries claim.

In relation to 5(b)(iv), we find that charge not proved for the reasons set out above. In relation to 5(b)(v), the practitioner has pleaded guilty.

In relation to 5(c), the Society has not pressed that charge.

In relation to 5(d), the practitioner has pleaded guilty and similarly, for 5(e) and 5(f).

In relation to 5(g)(i), the practitioner has pleaded guilty. In relation to 5(g)(iii), we find that charge not proved for the reasons set out above.

In relation to 5(h)(i), the practitioner has pleaded guilty. In relation to 5(h)(iii), we find that charge not proved for the reasons set out above.

In relation to paragraph 5(i)(i), the practitioner has pleaded guilty. In relation to 5(i)(iii), we find that charge not proved for the reasons set out above. In the circumstances we find charge 5 proved and that the practitioner has been guilty of undue delay and failure to maintain reasonable standards of competence and diligence.

Charge 6 has not been pressed by the Society.

In relation to charge 7, it has been agreed that we look at the particulars (g), (h), (i), (j) and (k) set out in clause 6. In relation to the particulars which might be bundled together as (g) and (h), we find that charge not proved. We have been unable to establish to our satisfaction that the comments were made recklessly, uncaring as to accuracy or were carelessly made. We find they were made in good faith, although perhaps in a form of greater brevity than in hindsight, circumstances might suggest appropriate.

In relation to 6(i), (j) and (k), we find those remarks were carelessly made as admitted by the practitioner. We do not

## The Solicitors Complaints Tribunal

find ourselves in possession of sufficient evidence to satisfy ourselves that the comment was made recklessly or uncaring as to accuracy.

In relation to charge 8, we accept the submissions on behalf of the Society. We believe that the practitioner did have in the circumstances, an obligation to render the client a bill of costs in the form requested covering all work for the client, and we find charge 8 proved. We find that the practitioner was in breach of his duty as a solicitor and in breach of his duty to maintain reasonable standards of competence and diligence.

In relation to charge 9, we are not prepared to find on the appropriate standard of proof that the practitioner is guilty of charging excessive fees.

In the circumstances, given the charges proved, we find the practitioner guilty of professional misconduct.

In assessing penalty, we have taken into account the authorities provided to us. We have also taken into account the practitioner's long period of unblemished practice, the references provided and the fact that there is no real evidence of fraudulent behaviour or attempting to profit from his behaviour.

At the end, however, the matters of which he has been found guilty relate to trust account breaches, failure to co-operate with the Society and ignoring the interest and concerns of clients. All of these are fundamental to the administration of the legal system in this state and have to be taken seriously.

## In the Matter of Michael Morrison Quinn

**Case No:** SCT/49  
**Date of Hearing:** 18 May 2001  
**Appearing Before:** Mrs C C Endicott (Chair)  
Mr G C Fox  
Ms D A Wilson (Lay Member)  
**Penalty:** Suspended for 6 months and fined \$15,000.00

### Charges

#### 1. DB

On 9 July 1998 when his firm was acting for DB in a matrimonial matter, the solicitor, in breach of s.8 of the *Trust Accounts Act 1973* caused the sum of \$7,050 to be transferred from the client's individual trust ledger account to his firm's general account when he was not authorised by law so to do.

### Particulars

- 1.1 At all material times the solicitor was a partner of Quinn & Scattini ('the firm') which acted for DB ('the client') in a matrimonial matter.
- 1.2 On 12 June 1998 the solicitor's firm delivered an account for costs and outlays to the client in the sum of \$3,500.90. The account set out details of work done by the firm during the period from 2 April 1998 (the commencement of the matter) to 4 June 1998.
- 1.3 On the same day, 12 June 1998, the solicitor caused the sum of \$3,500.90 to be transferred from the

client's individual trust ledger account into his firm's general account in payment of the said account.

- 1.4 On 9 July 1998 the solicitor's firm prepared, but did not send to the client, an account for costs and outlays totalling \$7,600 which account contained no details of the work done, nor the period purportedly covered by any said work.
- 1.5 That same day, 9 July 1998, the solicitor caused the sum of \$7,600 to be transferred from the client's individual trust ledger account into his firm's general account.
- 1.6 At the time of the said transfer of \$7,600, the solicitor's firm was entitled to transfer the sum of \$550 in payment of an account dated 9 April 1998 for an unrelated matter (file number 980323). In respect of the transfer of the balance sum of \$7,050 (\$7,600 minus \$550) the solicitor's firm had not been authorised in writing within s.8(1)(c) of the *Trust Accounts Act 1973* and was not otherwise authorised by law to effect the transfer.
- 1.7 Subsequent to 9 July 1998 the solicitor's firm delivered to the client, accounts for costs and outlays as follows:

Date	Amount	Period covered by Account
31.08.98	\$3,034.95	11.06.98 to 26.08.98
22.02.99	\$2,138.85	31.08.98 to 11.02.99