

# In the Matter of Craig Leonard Stevenson

Case Number: SCT/90

Date of Hearing: 9 December 2002

Appearing Before: Mr P Short (Presiding Member/Practitioner Member)

Mr G C Fox (Practitioner Member)

Ms E Jordan (Lay Member)

Penalty: Fined \$5,000.00

## 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 moneys, has failed, during the period 2000–2002, to comply with his obligations as trustee with respect to the audit of his trust account.

## Particulars

(a) At all material times the practitioner was the trustee of a trust bank account conducted at the Booval Branch of the Bank of Queensland.

(b) The practitioner is obliged as trustee, in respect of each financial period ending 31 March, to cause his trust records to be audited and to:

(i) by 31 May, lodge an auditor's report for that financial period in accordance with section 16(1) of the Trust Accounts Act; and

(ii) by 14 June, lodge an audit certificate for that financial period in accordance with section 3 of the Legal Practitioner's Regulation 1996.

(c) In breach of his duty, the practitioner:

(i) for the financial period ending 31 March 2000, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, such report and certificate not being lodged until on or about 17 November 2000;

(ii) for the financial period ending 31 March 2001, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, or at all;

(iii) for the financial period ending 31 March 2002, failed to have his trust account audited and to lodge the audit report and audit certificate by the due dates, or at all.

2. Withdrawn.

3. Withdrawn.

4. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice, in that he, being a solicitor and trustee of property, during the period from May 1998 to June 2001, dealt with clients' trust moneys in breach of the terms of the trust and in breach of section 8(1) of the Trust Accounts Act and section 10(1) of the Trust Accounts Regulation 1999 (for the period prior to 25 June 1999, in breach of regulation 5(d) of the Trust Accounts Regulations 1973), by wrongfully drawing against, or causing payments to be made from the trust account for certain matters, in circumstances where the amount of the withdrawal or the payment was more than the amount of cleared funds held in the account for such matters, as particularised in the Schedule hereunder.

## Particulars

(a)

Trust Ledger	Date of payment	Amount Ledger Overdrawn	Payee	Reason for Payment	Date of Restoration of Trust Deficiency
TS	04.04.00	\$12,994.99	Client, TS	Overpayment of settlement moneys	29.11.00
MCK	13.10.00	1,827.50	Office of State Revenue	Stamp duty	29.11.00
SC	13.10.00	77.30	Practitioner	Costs and outlays	30.11.00
BU	28.07.00	550.00	Office of State Revenue	Stamp duty	30.11.00
C&M	12.10.00	530.00	Office of State Revenue	Stamp duty	29.11.00
O&S	13.10.00	800.00	Office of State Revenue	Stamp duty	29.11.00
BA	28.07.00	800.00	Office of State Revenue	Stamp duty	29.11.00
MCN	23.06.98	20.00	Practitioner	Costs and outlays	20.07.99
SH	11.05.98	9.00	Practitioner	Costs and outlays	20.07.99
F	01.05.01	53.28	Office of State Revenue	Stamp duty	10.05.01
	02.05.01	3,547.20 (incl of \$53.28)	ST (\$3,493.92)	Private payment	10.05.01
ST	07.06.01	2,100.00	ST	Private payment	20.06.01 (\$100) 22.06.01 (balance)
		\$23,255.99			

(b) The said moneys, totalling \$23,255.99, being trust moneys held by the practitioner for various clients other than those on whose behalf the payments were made, were thereby unlawfully applied by the practitioner variously to his own use and benefit, and to the use and benefit of diverse third parties, until such time as the various trust deficiencies were restored.

5. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, dealt with clients' trust moneys in breach of the terms of the trust and in breach of section 7 of the Trust Accounts Act by, without authority or any other lawful entitlement, permitting the intermingling of the property with his own property and thereby applied the same to his own use and benefit, until such time as the moneys were restored.

#### Particulars

(a)

(i) On 20 October 2000, the practitioner received the sum of \$1,140 directly into his general account from his clients, C&M, which amount included trust moneys in the sum of \$530 in respect of stamp duty, which duty had been previously paid from the trust account on 12 October 2000 in breach of section 10(1) of the Trust Accounts Regulation;

(ii) the said sum of \$530 was received into the general account in breach of section 7 of the Trust Accounts Act, and without the practitioner having any lawful entitlement thereto;

(iii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until 29 November 2000 when the practitioner caused the trust deficiency to be restored by paying the sum of \$530 to the trust account.

(b)

(i) on 1 September 2000, the practitioner received the sum of \$1,410.50 directly into his general account from his client O&S, which amount included trust moneys in the sum of \$800 in respect of unpaid stamp duty, which duty was subsequently paid from the trust account on 13 October 2000, in breach of section 10(1) of the Trust Accounts Regulation;

(ii) the said sum of \$800 was received into the general account in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement thereto;

(iii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until 29 November 2000 when the practitioner caused the trust deficiency to be restored by paying the sum of \$800 to the trust account.

(c)

(i) On 10 October 2000, the practitioner received trust moneys in the sum of \$1,018.25 directly into his general account from his clients, A&RP, in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement thereto;

(ii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until the trust deficiency was restored:

- as to \$572, on 19 October 2000 by the rendering by the practitioner to his clients of a bill of costs; and
- as to the balance of \$446.25, upon the payment by the practitioner of stamp duty, the fact or date of such payment being presently unknown.

(d)

(i) On 30 June 2000 the practitioner received trust moneys in the sum of \$1,053 directly into his general account from his client SZ, in breach of section 7 of the Trust Accounts Act and without the practitioner having any lawful entitlement thereto;

(ii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until the trust deficiency was restored:

- as to \$261, on or about 24 July 2000 by the payment by the practitioner of registration fees;
- as to \$500, on 27 July 2000 by the rendering by the practitioner to his client of a bill of costs; and
- as to the balance of \$292, on or about 28 July 2000 by the payment by the practitioner of stamp duty.

6. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice in that he, being a solicitor and trustee of property, dealt with clients' trust moneys in breach of the terms of the trust and in breach of section 8 of the Trust Accounts Act by, without authority, or any other lawful entitlement, intermingling the property with his own property and thereby applied the same to his own use and benefit until such time as the moneys were restored to the trust account.

#### Particulars

(a)

(i) On 29 November 2000, the practitioner withdrew the sum of \$100, the property of his client Alt from the trust account to his own trust ledger for costs, without having any lawful entitlement thereto;

(ii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. The said trust deficiency has not been restored.

(b)

(i) On 30 June 2000, the practitioner withdrew the sum of \$1,174, the property of his client Jenner from the trust account to the general account for costs and outlays in breach of section 8 of the Trust Accounts Act and without having any lawful entitlement thereto;

(ii) the said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until the trust deficiency was restored:

- as to \$25, on 24 July 2000 by the payment by the practitioner of a requisition fee;

- as to \$1,000, on 25 July 2000 by the rendering by the practitioner to the client of a bill of costs; and
- as to the balance of \$149, on 28 July 2000 by the payment by the practitioner of stamp duty.

7. That the practitioner is guilty of professional misconduct or unprofessional conduct or practice, in that, further to the matters particularised in Charges 1-6 hereof, he, being a solicitor and trustee of property has, during the period March 2000 to December 2001, failed to keep, operate and conduct his trust account in a proper and professional manner, and engaged in the various respects particularised hereunder, in breaches of the Trust Accounts Act 1973 and the Trust Accounts Regulation 1999.

### Particulars

(a) During the period July 2000 to October 2000, the practitioner failed, at the end of every month, to reconcile the trust account cash book with the trust bank balance and the trust account ledger, the reconciliations for such period having only been completed on or about 23 November 2000, in breach of section 12(1) of the Trust Accounts Regulation.

(b)

(i) as at November 2000, the trust account cash book did not disclose a brief description of the matter for which moneys were received and paid, in breach of section 6(1) of the Trust Accounts Act and section 11(1) of the Trust Accounts Regulation;

(ii) as at November 2000, the trust ledger accounts did not consistently disclose:

- for each trust ledger account, a brief description of the matter for which the trust moneys were received or paid; and
- for each entry in the trust ledger account, the name of the person from whom trust moneys were received; in breach of section 6(1) of the Trust Accounts Act and section 14 of the Trust Accounts Regulation.

(c)

(i) trust account receipts issued during the period April 2000 to November 2000 did not, in the various respects particularised in the affidavit of Grenville Hughes filed in these proceedings, record the information required, in breach of section 5(1) of the Trust Accounts Regulation;

(ii) trust account receipts examined during the course of an examination of the practitioner's accounts pursuant to section 31 of the Queensland Law Society Act in December 2001/January 2002 did not, in the various respects particularised in the affidavit of Marissa Lowe filed in these proceedings, record the information required, in breach of section 5(1) of the Trust Accounts Regulation;

(iii) the practitioner failed to maintain a register of trust account receipts in breach of regulation 4 of the Trust Accounts Regulation.

(d) Trust account cheque forms examined during the course of an examination of the practitioner's accounts pursuant to section 31 of the Queensland Law Society Act in November 2000, and during the course of a further section 31 examination of the practitioner's accounts in December 2001/January 2002 were not payable to order, in breach of section 12(1) of the Trust Accounts Act. Further, trust account cheque forms examined during the course of the section 31 examination of the practitioner's accounts in November 2000 were not crossed "not negotiable", in breach of section 12(1) of the Trust Accounts Act.

(e) Trust account cheque butts examined during the course of the section 31 examination of accounts in November 2000 and during the course of the further section 31 examination of accounts in December 2001/January 2002 did not, in the various respects particularised in the affidavits of Grenville Hughes and Marissa Lowe filed in these proceedings, contain appropriate particulars, in breach of sections 10(3) and 10(4) of the Trust Accounts Regulation.

(f) Payments were made from the trust account as particularised in the Schedule hereunder other than by a trustee's cheque or a cheque drawn by a bank, in breach of section 12(1) of the Trust Accounts Act.

Date	Amount
12 May 2000	\$1,285.00
29 June 2000	44,323.37
29 June 2000	25.00
29 June 2000	80,000.00
05 September 2000	45,900.00
29 September 2000	15,000.00
09 October 2000	100,000.00
01 November 2000	9,700.00

(g) Trust account deposit forms were not kept for the trust deposits particularised hereunder, in breach of sections 8 and 9 of the Trust Accounts Regulation.

Deposit Date	Amount	Details
1 September 2000	\$2,911.25	Bank counter deposit
2 October 2000	1,953.50	Bank counter deposit
22 October 2001	22,734.40	Personal cheques of \$4,400 and bank cheques of \$18,334.40
26 October 2001	12,335.00	Personal cheques of \$300 and bank cheques of \$12,035
2 November 2001	4,020.00	Bank cheques of \$4,020
12 November 2001	5,175.00	Cash of \$750 and bank cheques of \$4,425

(h) In respect of the investment by the practitioner on 7 March 2000 of the sum of \$170,000 on behalf of NV:

(i) the practitioner failed to obtain authorisation in writing for the investment of such moneys in breach of section 8(2) of the Trust Accounts Act;

(ii) the practitioner failed to keep an investment ledger account for such investment in breach of section 16(2) of the Trust Accounts Regulation.

(i) On the various diverse occasions in the period October-November 2001 particularised in the schedule hereunder, trust moneys were not paid into the trust account daily, in breach of section 7(3) of the Trust Accounts Act.

Matter	Amount	Date of receipt issued	Type of Funds	Date Banked
HA	\$440.00	05.10.01	Cheque	10.10.01
D&B	1,970.00	05.10.01	Cheque	10.10.01
BL	2,350.00	16.10.01	Cheque	22.10.01
CO	1,290.00	12.11.01	Cheque	22.11.01
M&K	705.00	12.11.01	Cheque	22.11.01
HO	620.00	26.11.01	Cheque	30.11.01
PL	3,025.00	30.11.01	Cheque	04.12.01
ME	900.00	30.11.01	Cheque	04.12.01

#### 8. Withdrawn.

9. That the practitioner is guilty of professional misconduct or unprofessional conduct or practise in that, in breach of his duty as a solicitor, he made representations concerning the matter of a payment of \$1,000 from his trust account in June 2000:

- (a) in a conversation with an officer of the Queensland Law Society Incorporated in November 2000; and
- (b) in a letter to the Manager of Audits of the Queensland Law Society Incorporated in March 2001; which representations were made recklessly, not caring whether they were true or false.

#### Particulars

- (a) On 15 June 2000 the practitioner drew counter-cheque no. 531488 in the sum of \$1,000 against his trust account payable to his general account ("the said cheque").
- (b) During the course of an examination of the practitioner's accounts pursuant to section 31 of the Queensland Law Society Act in November 2000, the practitioner represented to Grenville Hughes, an accountant in the employ of the Society, to the effect, that he was unable to identify a trust ledger to which the withdrawal related and that he did not know the details of the payee of the said cheque.
- (c) The said representations were made recklessly, as at the time they were made, the practitioner had no reasonable grounds for making them, the said cheque having been drawn by the practitioner against his own trust ledger and paid to himself.
- (d) By letter dated 30 January 2001, the Manager of Audits of the Society wrote to the practitioner, enclosing a copy of Mr Hughes's section 31 report and requesting the practitioner's comments with respect to the matter of the payment of \$1,000 from the trust account in June 2000.
- (e) By letter dated 12 March 2001 to the Manager of Audits, the practitioner represented: "\$1,000 trust withdrawal – this was a countercheque which was to be drawn from the general account but which was withdrawn in error from the trust account. This money has been replaced."
- (f) The said representations were made recklessly, and were misleading, as at the time they were made the practitioner had no reasonable grounds for making them, the practitioner not knowing whether the moneys had been withdrawn in error and the said withdrawal having never been replaced.

10. 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;
- in relation to the remittance of money to the Office of State Revenue for stamp duty.

#### Particulars

- (a)
  - (i) the practitioner acted for the purchasers in the matter of M&H purchase from EV, which settled on 17 December 1999. Relevant conveyancing documents were stamped in-house at the time of settlement;
  - (ii) on 17 December 1999 client funds of \$1,100 were received by the practitioner for the payment of stamp duty. As at 24 November 2000 the moneys in respect of stamp duty had not been remitted by the practitioner to the office of State Revenue.
- (b)
  - (i) The practitioner acted for the purchaser in the matter of MR purchase from PT, which settled on 21 December 2000. Relevant conveyancing documents were stamped in-house at the time of settlement;
  - (ii) on 21 December 2000, client funds of \$1,305 were received by the practitioner for the payment of stamp duty, but the moneys in respect of stamp duty were not remitted to the Office of State Revenue until 28 June 2001.

#### Appearances

- (a) For the Council of the Queensland Law Society Incorporated:  
Mr R G Perrett, Solicitor of Messrs Clayton Utz, Solicitors.
- (b) For the Practitioner:  
Mr A Boe, Solicitor of Messrs Boe Callaghan, Solicitors.

#### Findings and Orders

1. The Tribunal gave leave to the Queensland Law Society Incorporated to withdraw charges 2, 3 and 8 of the Notice of Charge dated 8 October 2002.

2. The Tribunal further gave leave to the Queensland Law Society Incorporated to amend charge No. 9 of the Notice of Charge in accordance with the signed draft.

3. The Tribunal finds the charges set out in the Notice of Charge dated 8 October 2002, as admitted by the practitioner, proven and that those charges amount to professional misconduct.

4. The Tribunal orders that the practitioner be suspended from practice for a period of twelve (12) months but that the suspension does not become operative unless the practitioner defaults in any one of the following conditions:

- (a) The Tribunal orders that the practitioner pay a penalty of \$5,000.00 to the Fund;
- (b) The Tribunal orders that the practitioner undertakes, and satisfactorily completes, the next available trust account module of the Practice Management course conducted by the Queensland Law Society Incorporated;
- (c) The Tribunal orders that the practitioner have his office procedures, files and accounts audited by a senior practitioner appointed by the Queensland Law Society Incorporated, at the practitioner's expense, in three months time, 12 months time, and 24 months time, and that the senior practitioner report his findings to the Queensland Law Society Incorporated;
- (d) The Tribunal orders that the practitioner pay the costs of the Queensland Law Society Incorporated, the recorder and the Clerk, as agreed, or failing agreement, as assessed by Monsour Legal Costs Pty Ltd;
- (e) The Tribunal further orders that the practitioner pay the penalty of \$5,000 within six (6) months of today's date and pays costs within six (6) months of agreement or assessment, whichever is the later.

## Reasons

The Practitioner was required to answer 10 Charges relating to his professional conduct, all involving his Trust Account. At the hearing, charges 2, 3 and 8 were withdrawn and charge 9 was amended. The significant effect of the amendments is that the Practitioner has now given an explanation of some of the transactions, and the allegation of dishonesty has been removed. The practitioner then admitted the 7 charges as amended and the hearing proceeded with submissions on penalty.

The practitioner was admitted as a Solicitor in Queensland in November 1996 and commenced practise as a sole practitioner in December 1997. It is apparent that he never fully understood or fulfilled his obligations as a Trustee of a solicitor's Trust account. His 2000 Audit was late and the Audit for 2001 and 2002 were not completed until the date of the hearing. The charges and admissions show he drew against money that were not cleared funds, he drew against funds that were not yet received, he treated the Account as a whole without having regard to the individual rights of beneficiaries, and he mixed his own funds in the Trust account even though with the misguided motive of putting some floor under the drawings to prevent the account as a whole becoming overdrawn.

The Law Society and the Practitioner each made their submissions treating the Charges as a whole, and the crux of the submissions by Mr Perrett for the Law Society is that the shambles of the transactions was so bad, and the long term failure to operate in a correct manner so bad, and the delay in fixing the errors was so long, as to amount to a total disregard for the obligations of a trustee, and amounted to conduct that a fair minded solicitor of good repute and standing would regard as "disgraceful or dishonourable". Added to this is his casual, even if not dishonest, answers to the inquiry from the Law Society and the failure to accept the repeated assistance and direction of his professional body.

Mr Boe for the Practitioner admitted the conduct fell short to a significant degree of the required standards, but pressed on us mitigating circumstances including; there was no dishonesty or intention to benefit; there was in fact no personal benefit; the practitioner in fact has suffered a significant loss as a result of his poor accounting; the Practitioner is young and in isolation in sole practise in the suburbs; he did not have sufficient support and did not employ a proper bookkeeper; the conduct has been remedied, and steps put in place with new accountants and proper bookkeeping assistance; if the prime purpose of disciplinary proceedings is to protect the public, then that purpose is satisfied; and punishment by suspension or striking off would be disproportionate.

In the result we believe the appropriate penalty is, as described by Thomas J in *Kehoe (AG v Kehoe)* [2000]QCA 222), some variety of other penalties including fines, costs and orders for re-education. In addition, and to allay our concern that the conduct may recommence if the practitioner again comes under sustained pressure of work, and attends to client legal cases without attending to management necessities, we intend to order a series of audits to correspond with the duration of the suspended order to cease practice. The suspension from operation of our suspension order is dependant upon the Practitioner maintaining this regime. By this mechanism we believe we have balanced the competing priorities, but the Practitioner should be aware that a suspension or striking off is very much in prospect if these charges reoccur.

Mr Boe asked for the Practitioner's name to be withheld from publication under the power in section 6L(4), on the basis; firstly it is the first time he has been before the Tribunal; the fact that no client money is missing; or the impact that publicity might have on his business. The hearings of the Tribunal are held in public and it follows that all matters involved in the hearing are public unless good reason can be shown to alter this normal state of affairs. We are not persuaded to suppress any evidence given, including the name of the Practitioner.