

In the Matter of John Thomas Tunn

Case Number: SCT/124
Date of Hearing: 21 June & 1 July 2004
Appearing Before: Mr P Cooper (Presiding Member)
Mr M Conroy (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J W Broadley (Clerk)
Penalty: Struck Off and ordered to pay compensation and costs.

Charges

1. In breach of Section 5H(1) of the Queensland Law Society Act 1952 ("the Act"), the practitioner failed in the respects particularised below, to comply with either or both of the following requirements:
 - (a) to give the Council of the Queensland Law Society Incorporated ("the Council"), within a stated reasonable time, an explanation in writing of a matter being investigated pursuant to section 5G(a) of the Act; and/or
 - (b) to deliver up to the Council, within a stated reasonable time, his client file to assist in the investigation of a complaint pursuant to section 5G(c) of the Act.

Particulars

1.1 In connection with the investigation of a complaint by R & SW

- (a) By a letter dated 25 February 2003, the Council, by its then Acting General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 20 February 2003 received by the Society from R & SW, by 17 March 2003; and
 - (ii) forward his client file to the Society by 17 March 2003.
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) By letters dated 2 April 2003 and 9 April 2003, the Society again requested the practitioner to produce his client file.
- (d) The practitioner failed or refused to deliver his client file to the Society until the 14 April 2003 when he delivered the client file to the Society.
- (e) The practitioner has continued in his failure or refusal to provide a response regarding the release of the trust moneys.

1.2 In connection with the investigation of a complaint by G & KC

- (a) By a letter dated 22 September 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint received on 17 September 2003 by the Society from G & KC by 14 October 2003; and
 - (ii) forward his client file to the Society by 14 October 2003.
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) By letter dated 18 November 2003, the Society again requested the practitioner to provide a written explanation and to produce his client file.
- (d) The practitioner has continued in his failure or refusal to provide a response to the complaint or to deliver his client file to the Society.

1.3 In connection with the investigation of a complaint by RW

- (a) By a letter dated 2 October 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward further information seeking a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 6 May 2003 received by the Society from RW, by 15 October 2003; and
 - (ii) forward his client file to the Society by 15 October 2003.
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) By letter dated 18 November 2003, the Society again requested the practitioner for a response and to provide an explanation to the Society by 25 November 2003.
- (d) By letter dated 29 October 2003, the Manager, Legal Investigations, again requested the practitioner, pursuant to section 5G(c) to produce his client file by 11 November 2003.
- (e) The practitioner has continued in his failure or refusal to provide the further information required by the Society or to deliver his client file to the Society.

1.4 In connection with the investigation of a complaint by KM

- (a) By a letter dated 19 November 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 27 July 2003 received by the Society from KM, by 3 December 2003; and
 - (ii) forward his client file to the Society by 3 December 2003
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) The practitioner subsequently provided a response and produced the client file on 17 December 2003.

1.5 In connection with the investigation of a complaint by MC

- (a) By a letter dated 20 March 2003, the Council, by its then Acting General Manager, Legal Investigations & Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 20 March 2003 received by the Society from MC, by 3 April 2003; and
 - (ii) forward his client file to the Society by 3 April 2003
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) By letter dated 29 October 2003, the Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner pursuant to section 5G(c) of the Act to produce his client file by 11 November 2003.
- (d) The practitioner subsequently provided a response to the complaint on 5 April 2003 but has failed to produce his client file.

1.6 In connection with the investigation of a complaint by GC

- (a) By a letter dated 18 March 2003, the Council, by its then Acting General Manager, Legal Investigations & Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 28 February 2003 received by the Society from GC, by 10 April 2003; and
 - (ii) forward his client file to the Society by 10 April 2003
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) The practitioner subsequently provided a response and produced the client file on 30 April 2003.

1.7 In connection with the investigation of a complaint by TA

- (a) By a letter dated 18 March 2003, the Council, by its then Acting General Manager, Legal Investigations & Prosecutions, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 12 March 2003 received by the Society from TA, by 10 April 2003; and
 - (ii) forward his client file to the Society by 10 April 2003
- (b) No written explanation was received from the practitioner within the time specified, nor did the practitioner produce his client file within the time specified.
- (c) The practitioner subsequently provided a response and produced the client file on 5 June 2003.

1.8 In connection with the investigation of a complaint by GH

- (a) By a letter dated 29 April 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) of the Act, to forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 14 April 2003 received by the Society from GH, by 21 May 2003.
- (b) No written explanation was received from the practitioner within the time specified.
- (c) The practitioner subsequently provided a response to the complaint on 5 June 2003.

1.9 In connection with the investigation of a complaint by AD

- (a) By a letter dated 11 June 2003, the Council, by its Manager, Client Relations Centre, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) of the Act, to forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 26 May 2003 by the Society from AD by 2 July 2003.
- (b) No written explanation was received from the practitioner within the time specified.
- (c) The practitioner subsequently provided a response to the complaint on 23 July 2003.
- (d) By letter dated 29 October 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner to produce his client file by 11 November 2003.

- (e) The practitioner has continued in his failure to deliver the client file to the Society.
- 1.10 In connection with the general investigation of complaints received by the Society during 2002 & 2003
- (a) By a letter dated 4 February 2004, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) of the Act, to forward further information to the Society seeking a sufficient and satisfactory written explanation of the management and supervision of his staff, with particular reference to their participation in the conveyancing matters of R & SW, G & KC, RW, KM, MC, GC, TA, GH and AD by 27 February 2004.
 - (b) No written explanation was received from the practitioner within the time specified.
 - (c) The practitioner has continued in his failure or refusal to provide a response to this letter.
- 1.11 In connection with the investigation of a complaint by TH on behalf of PF, Lawyers
- (a) By a letter dated 1 April 2004, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, requested the practitioner, pursuant to section 5G(a) and (c) of the Act, to:
 - (i) forward a sufficient and satisfactory written explanation of the matters referred to in a complaint dated 9 March 2004 received by the Society from TH at PF, Lawyers, by 29 April 2004; and
 - (ii) forward his client file to the Society by 29 April 2004.
 - (b) No written explanation was received from the practitioner within the time specified nor did the practitioner produce his client file within the time specified.
 - (c) The practitioner has continued in his failure or refusal to provide the explanation required by the Society or to deliver his client file to the Society.
2. The practitioner failed to comply with various Notices given by the Council under Section 5H(2) of the Act for a period of 14 days after the giving of the Notices.

Particulars

- 2.1 In connection with the investigation of a complaint by R & SW
- (a) On 18 March 2003, the Council, by its then Acting General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto or to deliver his client file as provided by the Notice.
- 2.2 In connection with the investigation of a complaint by G & KC
- (a) On 27 November 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.
- 2.3 In connection with the investigation of a complaint by RW
- (a) On 26 November 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.
- 2.4 In connection with the investigation of a complaint by TA
- (a) On 11 April 2003, the Council, by its General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.
- 2.5 In connection with the investigation of a complaint by AD
- (a) On 8 July 2003, the Council, by its General Manager, Legal Investigations and Prosecutions, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.
- 2.6 In connection with the investigation of a complaint by MC
- (a) On 18 November 2003, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.

- 2.7 In connection with the general investigation of complaints received by the Society during 2002 & 2003
- (a) On 1 March 2004, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto as provided by the Notice.
- 2.8 In connection with the investigation of a complaint by TH of PF, Lawyers
- (a) On 30 April 2004, the Council, by its Manager, Legal Investigations, being duly authorised in that regard, gave the practitioner a written notice pursuant to Section 5H(2) of the Act.
 - (b) The practitioner failed, within the 14 day period specified in the notice, to furnish a reply thereto or to deliver his client file as provided by the Notice.
3. The practitioner is guilty of unprofessional conduct or practice in that, during the period March 2002 – April 2003, in breach of his duty as a solicitor:
- (a) he has been guilty of serious neglect or undue delay; and/or
 - (b) he has failed to maintain reasonable standards of competence or diligence in relation to the conduct of the matters, the subject of Charge No 1 hereof.

Particulars

- 3.1 In connection with the investigation of a complaint by R & SW
- (a) In or about November 2002, the practitioner caused or permitted the conduct of the conveyancing matter W – Purchase from B (“the W matter”) to be delegated to his conveyancing clerks, CS and TH, each of whom was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
 - (b) Settlement of the W matter was due to be effected on 24 December 2002 at Townsville; however due to delays in the practitioner forwarding transfer documents to his town agent to effect the settlement, settlement did not occur until 9 January 2003.
 - (c) At the time of the settlement, an amount for default interest was paid to the vendor, notwithstanding that Mr & Mrs W had no knowledge of this further amount, nor had they received any advice regarding the payment of this amount, nor had they agreed to such amount.
 - (d) At the time of settlement, the practitioner retained the sum of \$135 in his trust account on behalf of the W matter, representing unexpended purchase moneys and/or costs and outlays.
 - (e) The practitioner has failed since settlement, to take any or any significant steps to refund the balance trust moneys to Mr & Mrs W
 - (f) In breach of his duty as a solicitor, the practitioner, during the conduct of the W matter:
 - (i) failed to exercise any, or any satisfactory supervision of either Ms S’s or Ms H’s dealings with the practitioner’s clients;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the payment of default interest to the vendor or the refund of trust moneys pertaining to the W matter;
 - (iii) failed to take any or any appropriate steps to give his clients the benefit of his professional judgment in the conduct of the W matter.
- 3.2 In connection with the investigation of a complaint by G & KC
- (a) In or about February 2002, the practitioner caused or permitted the conduct of the conveyancing matter C – Sale to F (“the C matter”) to be delegated to his conveyancing clerk, VB, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
 - (b) Settlement of the C matter was effected on 23 April 2002 and the sum of \$10,000 was retained by the purchaser’s solicitors pending further building inspections of the dwelling.
 - (c) At the time when the moneys were proposed to be retained, the practitioner’s employee, VB, did not obtain instructions from Mr & Mrs C as to the basis upon which the retention moneys would be held and/or applied to rectify the defect in the dwelling.
 - (d) In or about October 2002, Ms B sought instructions from Mr & Mrs C regarding a proposal to release the retention moneys to the purchaser.
 - (e) On 21 October 2002, Mrs KC wrote to the practitioner, declining to give her instructions for the release of the retention moneys and sought the advice of Ms B regarding the purchaser’s proposal to release the moneys.
 - (f) No further communication ensued with the clients until 11 February 2003 when the clients received a letter from the practitioner enclosing a cheque for the balance retention moneys in the sum of \$25.
 - (g) At no time did either Mr or Mrs C authorise the release of the retention moneys.
 - (h) In breach of his duty as a solicitor, the practitioner, during the conduct of the C matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms B’s dealings with the practitioner’s clients;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms B’s dealings with the retention moneys pertaining to the C matter;
 - (iii) failed to take any or any appropriate steps to give his clients the benefit of his professional judgment in the conduct of the C matter.
 - (iv) failed to take any or any satisfactory steps at or about the time of settlement to ensure that Mr & Mrs C were properly informed as to the basis upon which the retention moneys would be held and their interests protected.

3.3 In connection with the investigation of a complaint by RW

- (a) In or about December 2002, the practitioner caused or permitted the conduct of the conveyancing matter W – Purchase from G (“the RW matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the RW matter was due to be effected on 24 December 2002; however, due to delays in Ms H forwarding transfer documents to the financier and the inability of Ms H to attend to settlement arrangements, settlement did not occur until 8 January 2003.
- (c) At the time of the settlement, an amount for default interest was paid to the vendor, notwithstanding that Mr W had no knowledge of this further amount, nor had he received any advice regarding the payment of this amount, nor had he agreed to such amount.
- (d) In breach of his duty as a solicitor, the practitioner, during the conduct of the RW matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the practitioner’s client;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the Redland Shire Council searches to be performed or the payment of default interest pertaining to the RW matter;
 - (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the RW matter.

3.4 In connection with the investigation of a complaint by KM

- (a) In or about February 2003, the practitioner caused or permitted the conduct of the conveyancing matter M – Purchase from M (“the M matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Finance approval in the M matter was due on 3 March 2003; and, during the period 26 February 2003 to 3 March 2003, Mr M unsuccessfully attempted to contact Ms H to confirm the approval of his finance application.
- (c) On 6 March 2003, the vendors, through their solicitors, terminated the contract and provided notification of such termination to the practitioner’s office.
- (d) As a result of the vendor’s termination of the contract, Mr M re-negotiated the contract but at a higher price.
- (e) In breach of his duty as a solicitor, the practitioner, during the conduct of the M matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the practitioner’s client;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the vendor’s solicitors in relation to the notification of the client’s finance approval;
 - (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the M matter and to protect his client’s interests.

3.5 In connection with the investigation of a complaint by MC

- (a) In or about November 2002, the practitioner caused or permitted the conduct of the conveyancing matter C – Purchase from L (“the MC matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the MC matter was effected on 18 November 2002 and on 6 February 2003, the practitioner attended to the lodgement of the transfer of ownership at the Department of Natural Resources.
- (c) The transfer of ownership was subsequently requisitioned, rejected by the Department of Natural Resources and not relodged by the practitioner until 6 May 2003.
- (d) For the period November 2002 to May 2003, the practitioner failed to take any or any sufficient steps to facilitate registration of the transfer, or to protect, whether by caveat or otherwise, the client’s interest in and entitlement to the property the subject of the transfer.
- (e) In breach of his duty as a solicitor, the practitioner, during the conduct of the MC matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the practitioner’s client;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H’s dealings with the Department of Natural Resources in relation to the registration of the transfer of ownership;
 - (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the MC matter.

3.6 In connection with the investigation of a complaint by GC

- (a) In or about June 2002, the practitioner caused or permitted the conduct of the conveyancing matter C – Purchase from H (“the GC matter”) to be delegated to his conveyancing clerk, VB, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the GC matter was effected on 2 July 2002 and on 3 July 2002, the practitioner attended to the lodgement of the transfer of ownership at the Department of Natural Resources.
- (f) The transfer of ownership was subsequently requisitioned and rejected by the Department of Natural Resources.
- (g) On or about 17 March 2003, the practitioner was advised by Mr C’s new solicitor that the registration of the transfer had not been effected.
- (h) For the period July 2002 to April 2003, the practitioner failed to take any or any sufficient steps to facilitate registration of the transfer, or to protect, whether by caveat or otherwise, the client’s interest in and entitlement to the property the subject of the transfer.
- (i) In breach of his duty as a solicitor, the practitioner, during the conduct of the GC matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms B’s dealings with the practitioner’s client;

- (ii) failed to exercise any, or any satisfactory supervision of Ms B's dealings with the Department of Natural Resources in relation to the registration of the transfer of ownership;
- (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the GC matter and to protect his client's interests.

3.7 In connection with the investigation of a complaint by TA

- (a) In or about January 2003, the practitioner caused or permitted the conduct of the conveyancing matter A – Purchase from T (“the A matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the A matter was effected on 21 February 2003 and, as a result of a miscalculation in the amount of deposit paid, Ms A was required to pay an additional \$2,700 so that settlement could be effected.
- (c) On 5 June 2003, the practitioner acknowledged to the Society that the error had been made and advised he would be reimbursing Ms A the sum of \$2,700 from his own funds; however, no such reimbursement has been made.
- (d) The practitioner has failed to take any, or any significant steps to reimburse Ms A for the moneys overpaid at the settlement.
- (e) In breach of his duty as a solicitor, the practitioner, during the conduct of the A matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H's dealings with the practitioner's client;
 - (ii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the A matter.

3.8 In connection with the investigation of a complaint by GH

- (a) In or about January 2003, the practitioner caused or permitted the conduct of the conveyancing matter H – Purchase from O (“the H matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the H matter was due to be effected on 27 February 2003; however due to delays in the practitioner receiving search results, settlement did not occur until 4 March 2003.
- (c) At the time of the settlement, an amount for default interest was paid to the vendor, notwithstanding that Mr H had no knowledge of this further amount, nor had he received any advice regarding the payment of this amount, nor had he agreed to such amount.
- (d) In breach of his duty as a solicitor, the practitioner, during the conduct of the H matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H's dealings with the practitioner's client;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H's dealings with the various conveyancing searches to be performed or the payment of default interest pertaining to the H matter;
 - (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the H matter.

3.9 In connection with the investigation of a complaint by AD

- (a) In or about March 2003, the practitioner caused or permitted the conduct of the conveyancing matter D – Sale to B (“the D matter”) to be delegated to his conveyancing clerk, VB, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the D matter was effected on 17 April 2003; however, despite Mr D's express instructions to the contrary, the balance sale proceeds were not deposited to Mr D's bank account until 22 April 2003.
- (c) In breach of his duty as a solicitor, the practitioner, during the conduct of the D matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms B's dealings with the practitioner's client to ensure the banking of the balance sale proceeds occurred on 17 April 2003;
 - (ii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the D matter.

3.10 In connection with the investigation of a complaint by KG

- (a) In or about December 2002, the practitioner caused or permitted the conduct of the conveyancing matter G – Sale to N (“the G matter”) to be delegated to his conveyancing clerk, TH, who was neither admitted to practice nor qualified to be admitted to practice as a solicitor of the Supreme Court of Queensland.
- (b) Settlement of the G matter was due to be effected on 18 December 2002; however, the practitioner permitted the settlement date to be extended to 20 December 2002 without the authority, knowledge or consent of Ms G.
- (c) Settlement of the G matter was effected on 20 December 2002; however, despite Ms G's express written instructions to the contrary, the balance sale proceeds was not immediately deposited to her bank account on settlement, but was deposited in various amounts over a 20 day period.
- (d) In breach of his duty as a solicitor, the practitioner, during the conduct of the G matter:
 - (i) failed to exercise any, or any satisfactory supervision of Ms H's dealings with the practitioner's client to ensure the client provided instructions to extend the settlement date;
 - (ii) failed to exercise any, or any satisfactory supervision of Ms H's dealings with the practitioner's client to ensure the banking of the balance sale proceeds occurred on the day of settlement;
 - (iii) failed to take any or any appropriate steps to give his client the benefit of his professional judgment in the conduct of the G matter with particular reference to the buyer's inability to complete the contract on the due date.

4. The practitioner is guilty of professional misconduct or unprofessional conduct or practice in that, in breach of his duty as a solicitor, he failed to honour an undertaking given by him in writing on 1 November 2002 to PF Lawyers.

Particulars

- 4.1 In or about October 2002, the practitioner acted for the seller, JM (M), in the conveyance for the sale of real property situated at 14 Glenview Court, Underwood (the property).
- 4.2 At all material times, PF Lawyers acted for the insurers of C Pty Ltd and JVP Pty Ltd under a Management Liability Insurance Policy. M's husband, BM, was employed by C Pty Ltd and, pursuant to a management agreement, staff employed by C Pty Ltd managed JVP Pty Ltd.
- 4.3 On 30 October 2002, PF Lawyers obtained an injunction from Judge Robin QC restraining M (and BM) from selling or otherwise disposing of their assets until further order, in such a way to reduce the value of their assets in Queensland below \$123,417.74, provided they were permitted to sell the property.
- 4.4 On 1 November 2002, the practitioner provided an undertaking to PF Lawyers:

"to deposit the entire sale proceeds of the property at 14 Glenview Court, Underwood into the trust account of Tunns Lawyers immediately after settlement of the sale; and
not to dispose of or otherwise deal with those settlement proceeds without an order of the court authorising that dealing."
- 4.5 Settlement of the contract for the property took place on 8 November 2002 and the sum of \$85,230.30 (the retention moneys) was retained by the practitioner in his firm's trust account pursuant to the undertaking.
- 4.6 On 11 November 2002, the practitioner disbursed \$6,656 from the retention moneys to RWS for the balance commission on the sale of the property.
- 4.7 At the time when the retention moneys were disbursed, there was no court order that authorised the disbursement.
- 4.8 The practitioner failed to honour his undertaking to PF Lawyers by distributing part of the retention moneys that he had previously undertaken to hold until a court order authorised that distribution and further, without providing any prior advice to PF of his intention to do so.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr M J Burns of Counsel instructed by the Queensland Law Society
- (b) For the Practitioner:
Mr L D Bowden of Counsel instructed by the practitioner

Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge in accordance with the Further Amended Notice of Charge dated 24 May 2004.
2. The Tribunal finds, on the evidence, Charges 1 and 2 proved and those matters constitute professional misconduct. The Tribunal finds the practitioner guilty of professional misconduct so far as Charges 1 and 2 are concerned.
3. The Tribunal finds, on the evidence, Charges 3 and 4 proved and those matters constitute unprofessional conduct or practice. The Tribunal finds the practitioner guilty of unprofessional conduct or practice so far as Charges 3 and 4 are concerned.
4. By majority, the Tribunal orders that the name of John Thomas Tunn be struck from the Roll of Solicitors of the Supreme Court of Queensland.
5. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Inc of and incidental to these proceedings, including the costs of the clerk and the recorder; such costs to be agreed and failing agreement to be assessed by Monsour Legal Costs Pty Ltd.
6. Upon the undertaking of John Thomas Tunn not to accept any new instructions on new files or new matters, the Tribunal orders that the order to strike off comes into effect at midnight on 1 August 2004.
7. The Tribunal is satisfied that the complainants mentioned below have suffered pecuniary loss because of the practitioner's professional misconduct or unprofessional conduct or practice as the case may be and the complainants have given appropriate notice. The Tribunal orders that the practitioner pay the stated compensation to the named complainants:-

R & SW	- \$135.00
RW	- \$1,108.07
KM	- \$7,000.00
TA	- \$2,700.00
AD	- \$1,374.57
KG	- \$7,000.00
8. The Tribunal rejects the claims for compensation by G & KC and by C Pty Ltd and JVP Pty Ltd.
9. The Tribunal further orders that John Thomas Tunn pay to the complainants the amounts ordered to be paid by way of compensation within three months..
10. The Tribunal further orders that John Thomas Tunn pay the costs of these proceedings, so ordered to be paid, within six months.

Reasons

Cooper, Jordan (Majority)

In Charge 1, the practitioner is charged with a breach of Section 5H(1) of the Queensland Law Society Act as a result of complaints by 10 clients of the practitioner and one count of a breach by the practitioner of Section 5G(a) of the Act.

Charge 2 charges the practitioner with failure to comply with eight notices issued by the Council to the practitioner pursuant to Section 5H(2) of the Act.

Charge 3 charges the practitioner with a breach of his duty as a solicitor in relation to the 10 complaints of clients of the practitioner subject of Charge 1 in that:

- (a) The practitioner has been guilty of serious neglect or undue delay; and/or
- (b) The practitioner failed to maintain reasonable standards of competency or diligence in relation to the conduct of the matters the subject of Charge 1.

Charge 4 relates to a breach of an undertaking given by the practitioner to hold certain funds in the practitioner's trust account.

Both Counsel have made submissions concerning the validity of Section 5H Notices. The Tribunal accepts the submissions made by Counsel on behalf of the Queensland Law Society in preference to those made by Counsel for the practitioner. There were filed two agreed Statements of Facts.

Charges 1 and 2 are statutory charges. The practitioner sought to explain the circumstances surrounding the complaints made by his clients, the subject of these charges, and laid the blame for the events that took place on the actions of his unqualified staff. While the practitioner accepted ultimate responsibility for the matters, he did so in a somewhat reluctant matter. The Tribunal is of the opinion that both charges are proved, noting that the practitioner has pleaded guilty to some of the particulars of Charge 2.

Breaches of Section 5H(1) and 5H(2) of the Act are serious matters. The regulation of the profession demands that practitioners must comply with notices issued by the Queensland Law Society. It is the obligation of the Queensland Law Society to investigate complaints. It is the opinion of this Tribunal that the practitioner's conduct falls far below the reasonable standards of a competent practitioner.

Charge 3, the practitioner in an agreed Statement of Facts as filed agreed to the particulars of the charge other than the effect that flowed from each of these particulars. The Tribunal is of the opinion on the evidence that the practitioner was guilty of serious neglect of his clients' affairs and that the practitioner failed to maintain reasonable standards of competency or diligence in relation to the conduct of his clients' files. The public are entitled to expect a better standard of conduct from their solicitor than that exhibited by the practitioner.

Charge 4 relates to a breach of an undertaking given by the practitioner. The Tribunal finds the practitioner was in breach of his undertaking. The undertaking should not be given lightly and when given must be strictly complied with. In the opinion of the Tribunal, the undertaking given by the practitioner may be said to be badly worded.

If the practitioner was to experience difficulty in being able to comply with the undertaking he has given, then the appropriate course was to either approach the Court to seek a variation of the undertaking or to approach the party in whose favour the undertaking was given. Notwithstanding this, the actions of the practitioners in relying on a letter from the agent to pay moneys to a third party without the consent of the party in whose favour the undertaking was given was reckless and foolish.

The Tribunal is aware of the provisions of Section 12 of the Queensland Law Society Handbook on undertakings. In the circumstances, the Tribunal finds the conduct of the practitioner amounted to unprofessional conduct or practice.

Compensation

The Tribunal is satisfied that the complainants in whose favour the compensation has been awarded have suffered pecuniary loss because of the practitioner's professional misconduct or unprofessional conduct or practice, as the case may be, and that the complainants have given appropriate notice to the Council and this body.

In the case of Mr and Mrs C and C Pty Ltd and JVP Pty Ltd, the Tribunal is not satisfied that these complainants have suffered pecuniary loss because of the practitioner's professional conduct.

Striking off is a serious step to take in relation to a practitioner. The majority of the Tribunal did consider suspension and monetary penalty, but were of the opinion that these were not appropriate in the circumstances.

In coming to the conclusion that the majority did, they took into the account the facts of the case and that the practitioner has previously appeared before the Tribunal three times, the first appearance being on 28 October, 1985; 4 November, 1992 and 28 September, 1994.

While the practitioner's appearance before the Statutory Committee took place some time ago, the Tribunal is not satisfied that a suspension or a monetary penalty in these proceedings would have the necessary effect in the circumstances. The last two appearances before the Statutory Committee resulted in suspensions of 13 months and 12 months respectively.

In all the circumstances, it's the opinion of the majority of the Tribunal that the practitioner is not a fit and proper person to practise and that the penalty is appropriate.

I should also note that, in the opinion of the Tribunal, the practitioner has had sufficient time and notice of the claims by the complainants.

Conroy (dissenting)

The above named, John Thomas Tunn, has pleaded guilty to a number of charges preferred by the Queensland Law Society. The Charges 1 and 2 constitute professional misconduct. Charges 3 and 4 constitute unprofessional conduct. The charge in relation to breaching an undertaking, I find, constitutes unprofessional conduct in all the circumstances of the matter for reasons which I will set out herein.

At the outset of the proceedings, the practitioner did not contest the particulars of the charges, but put in issue the inference which the Tribunal should draw in respect of those charges and whether those charges, if proven, constitute professional or unprofessional conduct.

We, the Tribunal, had the opportunity of hearing the practitioner give evidence before it and the practitioner being vigorously cross-examined by Counsel for the Queensland Law Society.

In principle, I agree with the findings of the majority of the Tribunal in all matters save with the exception of what constitutes an appropriate penalty.

The charges in respect of which professional misconduct has been proven are, in my view, at the lower range of seriousness and the major charge which the practitioner was facing was the charge of breaching an undertaking.

The charges in respect of which professional misconduct have been proven are matters which relate to either oversight, carelessness on the part of the practitioner, or failure to exercise an appropriate degree of supervision. Indeed, it could be reasonably inferred that the practitioner has accepted instructions in too many matters when he did not have sufficient qualified staff to maintain the level of practice which he was conducting.

Those charges have resulted in a number of claims being made for compensation. Indeed, if the practitioner is covered by a mandatory scheme of professional negligence insurance and all complainants, apart from any orders that this Tribunal may make, are able to be adequately compensated by means of pursuing a claim for professional negligence (if able to be proven) against the practitioner.

In other words, none of the claimants will, in reality, be exposed to a loss and they will be capable of being restored to their original position without loss if they are able to prove that they have indeed suffered any financial loss.

In those circumstances, as there is no fraudulent conduct on the part of the practitioner; there is no trust account defalcation; nor is there any suggestion of dishonesty or misappropriation, in my view the practitioner's actions constitutes conduct which would demand a lesser range of penalties than the overall penalty which has been imposed by the majority of this Tribunal.

In relation to the breach of the undertaking, it is noted that a Mareva injunction was obtained by a firm of solicitors against the client. Subsequently, the practitioner was acting for the client on a conveyance. The Mareva injunction, on its terms, permitted certain things to be done from the proceeds of the sale of a property. The undertaking which was provided by the solicitor to another firm of solicitors went far wider than the Mareva injunction and indeed, in my view, was not a proper undertaking to be sought from the practitioner.

The practitioner was, in my view, extremely foolish to sign such an undertaking in terms of which he gave to the firm of solicitors seeking the undertaking, as quite clearly on its literal interpretation, the undertaking could not be complied with, let alone leaving aside the question of the alleged breach. The literal interpretation of the undertaking required the practitioner to preserve the gross proceeds of sale of a property in circumstances which clearly the practitioner was not able to do if he was to effect the settlement of the conveyance.

The practitioner has sought to lead evidence and to explain how the breach of the undertaking in respect of the net proceeds of the sale retained by him occurred. He concedes that he acted upon a letter received from a real estate agent which purported to say permission had been given to release from the sale proceeds the agent's commission to the agent.

The solicitor very unwisely acted on that letter without seeking the consent of the firm of solicitors who had sought the undertaking and released commission to the agent, but to give the practitioner credit, preserved the balance of the money of the net proceeds of the sale and subsequently paid same into Court, thinking he had discharged his obligation.

It was extremely imprudent of the practitioner to have signed the undertaking in the first place which could not be performed and, indeed in my view, it was quite improper and highly irregular for the solicitors who sought the undertaking to seek to have the practitioner sign an undertaking in terms which clearly could not be honoured by the practitioner.

It is for this reason that I have found that the breach of the undertaking is unprofessional conduct as opposed to professional misconduct.

It has been submitted to the Tribunal that the practitioner has appeared before the Tribunal and/or the Statutory Committee on at least three occasions in respect of which a range of penalties have been imposed. Indeed, some of those penalties included periods of suspension and it has been urged upon the Tribunal that because of the previous suspensions and his previous professional track record, that a strike-off is the appropriate penalty.

Can I say at the outset that, in my view, it is not the appropriate penalty, given the circumstances of the matter? The circumstances of these matters indicate that it is ten years since the practitioner had any matters brought before this Tribunal. The previous offences involved far more serious matters and involved conduct, which of itself might well have led the Statutory Committee which sat on those occasions to impose a strike-off order, but they chose not to do so, indicating that a suspension was an appropriate penalty which would enable the practitioner to return to practise and be fit to practise and not be a risk to the public.

Given that there is no defalcation, there is no misappropriation, there is no fraud and there is no dishonesty, in my view, the appropriate penalty is a substantial fine and a further order placing some restrictions on the practitioner's further professional life in the near future. The penalty which I would impose would be as follows:

1. The practitioner pay a penalty of \$30,000.00 to the Fund.
2. The practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to these proceedings together with the costs of the clerk and the recorder, to be agreed upon between the Queensland Law Society and the practitioner, failing which to be assessed by Monsour Legal Costs Pty Ltd.

3. The practitioner be required to undertake not to accept instructions in more than ten conveyancing matters per month over a period of the next two years, and if he chooses to do so, he must employ a qualified solicitor to supervise such conveyancing work and support him in his other work.
4. The practitioner submits to a half-yearly audit of his files by a qualified senior practitioner nominated by the Queensland Law Society, such audit is to be carried out at the practitioner's cost.
5. That the practitioner be required to enrol and complete satisfactorily the Professional Standards Module of the Practice Management Course within a period of two years.

Taking those matters into account, it is my view that the practitioner would be fit to continue practising and not be a risk to the community.

In giving this judgement, I note that the practitioner has received a substantial number of testimonials from other practitioners for whom he has acted as town agents in family law matters in respect of which he said was the area of his preferred practise. It is noted that there has been no complaints received which are before this Tribunal which relate to any conduct as a practitioner in the Family Court or the Federal Magistrates Court in its Family Law jurisdiction.

I should make one further comment in relation to these matters. During the course of the proceedings, it became evident that the Queensland Law Society had made an error in the issue of their Statutory Section 5H Notices. In those notices, they referred to the failure to respond to a letter issued from the Queensland Law Society, which letter they referred to as "6 February". In reality, there was no letter of 6 February but there is a letter dated 4 February.

It was urged upon the Tribunal that this was not fatal as the practitioner would have been well aware of the matters which were the subject of the Section 5H Notice and therefore we should disregard the error which has occurred on the part of the Queensland Law Society.

In sworn evidence given by the practitioner, the practitioner conceded that he was not misled by the notice and therefore, in the circumstances, I do not think anything turns on this point. I would however make the observation that where the Queensland Law Society is reviewing the conduct of practitioners in respect of their professional performance, it is incumbent upon the Queensland Law Society to likewise exercise a degree of care and skill which they demand from their profession. It is indeed regrettable that the Queensland Law Society has failed to exercise that care in a matter of such gravity and it is a matter of some concern.