# In the Matter of Paul Francis Whitman

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| Case Number: | SCT/83 |
| Date of Hearing: | 18 & 19 December 2002 and 3, 5, 7 & 12 February 2003 |
| Appearing Before: | Ms C Endicott (Chairperson/Practitioner Member)<br>Mr P Short (Practitioner Member)<br>Dr J Lamont (Lay Member) |
| In Attendance: | Mr J Nimmo (Legal Ombudsman)<br>Mr J W Broadley (Clerk) |
| Penalty: | Suspended from practice for a period of nine months from 12 March 2003 |

## Charges

The Council of the Queensland Law Society Incorporated requires the Practitioner of 231 North Quay, Brisbane, Queensland to answer the following charges:

1. On or about 7 August 2001, when acting as agent for S Solicitors, the solicitor misappropriated client trust funds of $630.00.

### Particulars

(a) At all material times the Solicitor was the principal of W & Co, Solicitors of 231 North Quay, Brisbane (the Firm).

(b) At all material times the Firm was acting as agent for S Solicitors of 179 Barkly Street, St Kilda, Melbourne in relation to a bankruptcy matter concerning a client of S Solicitors, one BAD (the Client).

(c) Under cover of a letter to the Firm dated 13 December 2000, S Solicitors forwarded to the Firm, *inter alia*, a cheque for $980.00 for the following purposes:

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| W & Co – agency fee | $350.00 |
| Monies to be paid to the client's creditors pursuant to a proposed composition with his creditors | $630.00 |
| Total: | $980.00 |

(d) On 19 December 2000, the said sum of $980 was paid into the Firm's general trust account to the credit of the individual trust ledger account of S Solicitors.

(e) On 7 August 2001, without the knowledge or authority of S Solicitors, the Solicitor transferred the said sum of $980 from his Firm's general trust account to its general account in pad payment of an interim account dated 16 February 2001 totalling $1,113.28 which the Firm had rendered to S Solicitors in relation to the matter.

(f) At all relevant times, of the said sum of $980 transferred as set out in paragraph 1(e) the sum of $980 constituted trust monies within the meaning of that term in the *Trust Accounts Act* 1973.

(g) At no time throughout the period from in or about 19 December 2000 when the said sum of $980 was paid into the Firm's general trust account until on or around 7 August 2001 when the said transfer to the general account was effected, did the purpose for which the said sum of $630 was originally paid into the said general trust account change with the result that the said transfer to the general account constituted a misappropriation of trust monies.

2. By letter to Queensland Law Society dated 23 January 2002, the Solicitor knowingly falsely represented to the Society that the nature of his firm's employment of one A was other than that of a solicitor.

### Particulars

(a) At all material times the solicitor was the principal of W & Co Solicitors (the Firm) of 231 North Quay, Brisbane, Queensland.

(b) Since in or around December 1999 to the present time, A has been employed by the Firm as a solicitor.

(c) By letter to the solicitor dated 23 January 2002, the Society wrote to the solicitor, relevantly in the following terms:

> *'Please advise:*
>
> – *the dates when Mr A commenced his employment at your firm or was otherwise retained by you;*
>
> – *if Mr A is still employed by you, and, if not, the date such employment ceased;*
>
> – *the duties and responsibilities of Mr A whilst he was employed by you;*
>
> – *the reason why you have not informed the Society of the circumstances of Mr A's employment with your firm.'*

(d) By letter dated 23 January 2002, the solicitor responded to the Society in the following terms:

> *'We refer to your letter of 23 January 2002.*
>
> *I answer your questions seriatim.*
>
> *1. Mr A commenced employment with this firm in December 1999;*

2. *Mr A continues to be employed by this firm;*

3. *The duties and responsibilities of Mr A are telephone receptionist, front counter receptionist, typist, filing clerk and research assistant.'*

(e) The clear import of the solicitor's response was that Mr A was not practising as a solicitor but rather was employed in an administrative capacity,

(f) At the time of writing his letter of 23 January 2002, the solicitor was well aware that Mr A was employed by his firm as a solicitor and had during the course of his employment, been practising as a solicitor so that his representation to the contrary as outlined above was false as he well knew.

2A. Alternatively to Charge 2, by the letter dated 23 January 2002 the Solicitor knowingly falsely represented to the Society the nature of his firm's engagement of A when he knew A had performed duties other than those represented in the Solicitor's letter dated 23 January 2002.

2B. Further to charges 2 and 2A, between I July 2000 and 13 March 2002 the Solicitor provided employment to A to practise as a solicitor:

(a) contrary to the Solicitor's representation in his letter dated 23 January 2002; and

(b) knowing that A did not hold a practising certificate issued by the Society pursuant to the *Queensland Law Society Act* 1952.

2C. Alternatively to charge 2B, between I July 2000 and 13 March 2002 the Solicitor failed to exercise appropriate supervision of A, such that A was allowed during that period to practise as a solicitor without holding a practising certificate issued by the Society pursuant to the *Queensland Law Society Act* 1952.

3. In breach of section 5H of *Queensland Law Society Act* 1952, the Solicitor failed to produce the documents referred to in Notice dated 14 May 2002 given to him pursuant to section 5H of *Queensland Law Society Act* 1952.

### Particulars

(a) At all material times, the Solicitor the principal of W & Co, Solicitors of 231 North Quay, Brisbane (the Firm);

(b) By letter dated 3 May 2002, the Queensland Law Society Inc (the Society) forwarded to the practitioner's solicitors K & Co, a notice under section 5G of *Queensland Law Society Act* 1952, calling upon the Solicitor to produce to the Society on or before 8 May 2002, all documents in his custody, possession or control, referred to in the Schedule to the said Notice.

(c) The Solicitor failed to produce documents the subject of the said section 5G Notice on or before 8 May 2002 as requested and on 14 May 2002, the Society, under the hand of its Director of Professional Standards, forwarded to the Solicitor a Notice under section 5H of *Queensland Law Society Act* 1952 notifying him that if his failure to produce the said documents the subject of the said Notice date 3 May 2002 continued for a period of 14 days after the date of his receipt of the said section 5H Notice, he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse for not producing the said document.

(d) The Solicitor failed to produce the said documents within the said fourteen day period or at all.

## Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr MJ Burns of Counsel instructed by Messrs McCullough Robertson, Solicitors

(b) For the Practitioner:
Mr S Keim of Counsel instructed by Messrs Stephen Comino and Cominos, Solicitors

(c) For the Complainant:
Mr IRS attended the hearing by teleconference

## Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge except in relation to proposed charge 2D in the Amended Notice of Charge.

2. The Tribunal refuses the application of the practitioner to have the three charges against him summarily dismissed.

3. The Tribunal finds the charges 1, 2, 2B and 3 in the amended Notice of Charge dated 6 February 2003 proved. The Tribunal finds that the proven charges constitute professional misconduct and that the practitioner is guilty of professional misconduct.

4. The Tribunal suspends the practitioner from practice for nine (9) months.

5. The Tribunal further orders that the effect of the suspension be deferred for a period of four (4) weeks from today, coming into effect on 12 March 2003.

6. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated and of the recorder and Clerk, to be agreed, or failing agreement as assessed by Monsour Legal Costs Pty Ltd.

7. The Tribunal orders that the practitioner be allowed six (6) months to pay the costs as ordered, being six (6) months after the agreement as to costs or the assessment as to costs, whichever is the later.

8. The Tribunal refuses the application for compensation by the complainant, Mr IRS.

## Reasons

## Practitioner's Application for Summary Dismissal of Charges

The Tribunal has had the opportunity of considering the application brought. The practitioner has applied to have the three charges against him summarily dismissed. Counsel for the practitioner argues as a matter of law the charges should be dismissed before any evidence is heard.

As to charge one, the practitioner submits that the charge alleges misappropriation but does not allege fraud or any absence of a claim of right. It is submitted that particulars provided of this charge establish no basis for the charge in law whether pursuant to the *Trust Account Act* or any other legislation or at common law. The Tribunal is not so persuaded. The charge as has been established by the submissions from the Law Society does not expressly allege fraudulent misappropriation. It is open to the Queensland Law Society to establish either fraudulent misappropriation or what may be called innocent misappropriation of trust funds. The Tribunal considers that it is proper and necessary for it to hear the Society's case in order to determine whether there is a case to answer on this charge.

This Tribunal is not obliged to adjudicate issues in the same manner as a court would adjudicate a criminal charge. The Tribunal should not restrict the scope of its functions by adopting criminal practice. The practitioner has been provided with particulars of charge one for several months. If he considered that the charge as particularised did not allow him to properly prepare for the case he is required to answer, he should have asked the Society to clarify the charge and particulars of charge well before the commencement of hearing. The Society should be permitted to present its case on the charge and the Tribunal should be permitted to adjudicate on that charge on the evidence presented to it and with the assistance of submissions on the law. It is inappropriate to dismiss charge one on a summary basis.

As to charge 2, the practitioner argues that as a matter of law this charge should be summarily dismissed as no basis for the charge is established by the particulars provided. This submission is based on the argument that the term "a practising solicitor" is a term of art and its meaning must be that as set out in the case law authority, particularly those cases referred to by the practitioner, *Way v. Bishop*, *re Bannister* and *re Fabricius*. The Tribunal does not accept that as a matter of law the term "a practising solicitor" must only be defined in the manner set out in the cases cited by the practitioner.

The basis of charge 2 is that the practitioner made a false representation and misled his professional body. The *Queensland Law Society Act* contains a definition of practising practitioner. In essence the term is defined to include any solicitor who prepares any documents relating to real or personal estate. It is not a definition that is confined by the meaning from case law authorities cited to the Tribunal. The Tribunal is not persuaded that as a matter of law it must find that a practising solicitor cannot include an employed solicitor and the Tribunal considers that it would be inappropriate to dismiss charge 2 on a summary basis on the arguments put forward by the practitioner.

It is not appropriate for this Tribunal to dismiss charge 2 on the narrow interpretation that the practitioner has made of the particulars. The Tribunal must be allowed to hear the evidence and the submissions of law in order to determine the substantive issues raised in charge two.

The practitioner objects to the application of the Society to amend the charge to include charges 2A, 2B and 2C. Apart from objecting to charge 2A on the basis the charge is not particularised, it is submitted that charges 2A to 2C should not be allowed on the basis of arguments that were advanced in opposition to charge 2 itself. The Tribunal has already determined that it does not accept the Society is prevented as a matter of law from bringing charges based on the practitioner employing a solicitor who did not have a current practising certificate or arising from that circumstance. The Tribunal considers it is proper to hear charges in terms of charges 2A to 2C and the Society should be permitted to present its case on those charge. Leave is hereby granted to include charges 2A, 2B and 2C. There is no element of surprise in amending the charges to include these additional charges.

The Tribunal takes a different view in relation to charge 2D. The practitioner has argued that there is compelling authority to prevent the bringing of charge 2D in conjunction with the hearing of these other charges and relies in particular on Smith's case and Barwick's case. These cases are not necessarily such compelling authority but overall the Tribunal does accept the arguments of the practitioner that it would be unfair in the circumstances to have him proceed to defend the allegations contained in the proposed charge 2D.

If in the course of the hearing the affidavit is found to be false, then separate proceedings can be commenced by the Society if it chooses to do so. The affidavit was used in interlocutory proceedings but the issues raised in that affidavit are inextricably mixed with the central issues to be heard by the Tribunal. Leave is not granted for the Society to include charge 2D.

As to charge 3, the practitioner argues that there is no lawful basis for the direction given by the Society which forms the basis for the charge that relies on a breach of section 5H of the *Queensland Law Society Act*. The Tribunal does not accept as a matter of law that this charge cannot be brought. The proper course would be for the Society to present its case and the practitioner to raise his arguments to defend himself against the charge. The Tribunal will not dismiss this charge on a summary basis.

Lastly, the practitioner urged the Tribunal to exclude evidence that he alleges was unlawfully obtained. The Tribunal is not bound by the rules of evidence and it should be allowed to hear the Law Society's case and deal with all the issues in these charges as they arise. The Tribunal does not accept that there is any basis requiring it to dismiss the charges summarily because of a general assertion of improper or unlawful collection of evidence is made. No authority is produced to this Tribunal that would compel the Tribunal to exclude the evidence objected to and the Tribunal wants to hear the evidence to consider its weight and cogency in all the circumstances.

## Objections to Evidence

Counsel for the Queensland Law Society has objected to evidence produced by the practitioner which goes to undermining the credit of one of the Society's witnesses, Ms N.

The evidence objected to is contained in the affidavits of witnesses Wl, Wn, L, M, J, A and in certain paragraphs of one of the affidavits of the practitioner himself. The objection is on the basis that this evidence amounts to collateral evidence and that there should be some finality to the scope of this type of evidence in these hearings.

While the Queensland Law Society recognises that there are exceptions to the rule that prohibits the acceptance of collateral evidence into hearings, counsel submits that this is not a case where any of those exceptions should be applied.

Counsel for the practitioner submits that the evidence objected to should be allowed under one of the exceptions to the collateral evidence rule. He submits the evidence goes to establishing bias, corruption, or is relevant to evaluating the worth of the oath of the witness N whose evidence goes to some prime issues in this case, namely whether the practitioner allowed Mr A to practise as a solicitor without holding a practising certificate.

The Tribunal has had the benefit of hearing evidence from Ms N and has been able to observe her as a witness and can make decisions at the appropriate time as to her reliability as a witness.

The passages objected to go, in the Tribunal's view, to the issue of the value of the worth of this witness. It is evidence that should be made available to the Tribunal. It is evidence that the Tribunal can take into consideration when deducing whether in fact there is any undermining of the credit of the oath of this witness and as such does come within one of the exceptions of the collateral evidence rule.

The Tribunal will allow the evidence objected to by the Society. The weight of that evidence, of course, is a completely different matter and one to be determined later by the Tribunal.

The practitioner has objected to paragraph 17 of the affidavit of witness F. This paragraph contains extremely prejudicial evidence relating to the practitioner. The Tribunal does not consider that the probative value of this evidence in paragraph 17 outweighs the prejudicial effect of that evidence.

The Tribunal is influenced by the authorities relied upon by the practitioner's counsel which are the same authorities that the Tribunal relied upon earlier in this hearing in rejecting the inclusion of Charge 2D.

The Tribunal does not consider that the paragraph should remain in and therefore strikes it out of the affidavit.

## Judgment on Charges

The practitioner faces three charges concerning his professional conduct.

Charge No 1 involves his trust account, which is referred to as 'The Trust Account Charge'; the second group numbered 2, 2A, 2B, 2C involved answers he gave to the Queensland Law Society and the employment and work of Mr A, which are called 'The A Charges' and the third charge involves his response to a formal 5H Notice requiring the production of documents and is called 'The Notice Charge'.

The charges were vigorously defended, first in interlocutory hearings, and then over five days of hearing.

The matter started when a Victorian solicitor S, made a complaint that the practitioner had used $630.00 given to him for a special purpose, namely to make a composition with the bankruptcy creditors of his client, for another purpose, namely to pay the practitioner's legal bill.

It seems, in the course of the investigation, the Queensland Law Society suspected or was told that a solicitor employed by the practitioner, namely one RA, might not have held the appropriate Practising Certificate.

In relation to the first charge, the Trust Account Charge, there is no doubt the amount of $630.00 was credited to the practitioner's trust account in December 2000 for a special purpose, namely to become the composition payment with the creditors of a client of Mr S. When the Practitioner thought his firm's involvement in the case was concluded, or at least as he said in evidence 'the matter had gone quiet or the objective was thwarted', his firm sent a bill on 16 February 2001. On 9 March 2001, Mr S wrote the practitioner a letter which the Tribunal finds to be 'an objection by the client to the quantum of that bill' within the meaning of the *Trust Account Act*.

The issue that arises for determination in this charge is whether the special purpose had failed and whether the solicitor had authority to use the amount of $630.00 to pay his bill. The Tribunal accepts the evidence of Mr S that the purpose had not failed by 7 August 2001 when the practitioner used the funds to pay his bill.

The Tribunal also finds that the practitioner was aware that the quantum of his bill was in dispute and that, by transferring the funds from his trust account, the practitioner had misappropriated his client's trust funds of $630.00.

The Tribunal does not find any fraudulent intent on the part of the practitioner, but finds that his actions amount to a withdrawal from his trust account in the absence of authority from his client. The Tribunal does not agree that the reasons advanced by the practitioner for his actions were reasonable or excused his breach of the *Trust Account Act* and *Regulations*.

The Tribunal finds Charge 1 proved.

'The A Charges' – Counsel for the Practitioner made much during cross-examination and in his submissions about the legality or propriety of the Law Society asking, in the course of the investigations of the S complaint, for information about Mr A. There is no need, in our view, for the Law Society to have segmented the two issues and no impropriety or illegality involved in the way the S complaint or the issues involving Mr A were investigated.

The Queensland Law Society is charged under the *Queensland Law Society Act* 1952 with the duty of investigating complaints made to it about the conduct of a practitioner, and when it received the S complaint on 12 October 2001, it was duty bound and empowered to investigate – see section 5F(1).

It also has power and responsibility to issue Practising Certificates – see Part 4 of the Act. It has numerous other functions and powers, but, for present purposes, these two functions, complaints investigation and the issuing and regulation of Practising Certificates, are in issue. The Society had power under section 5F(1) to investigate complaints and power under 5F(2) for example, to investigate the Practising Certificate issue.

If Mr A did not hold the appropriate certificate, then it could be an issue of professional misconduct and also a breach of the Act for him and for his employer, the Practitioner. The Law Society has other specific powers under its Act and as the body charged with the management of the solicitors branch of the profession in Queensland, but section 5F is sufficient to dispose of the suggestion that the investigations and requests were unlawful.

The Practitioner did not make the claim of illegality at the time he was asked for an explanation of Mr A's presence in his firm, but replied to the Society's letter of inquiry in his own letter dated 23 January 2002 in what the Law Society says is a false and misleading way.

If he had replied saying "your request is unlawful and Mr A's employment is of no concern of yours", that would be a separate issue, but he replied in the letter of 23 January 2002 saying Mr A was employed as a telephone receptionist, in a clerical capacity and in a research capacity.

When faced with such a request or inquiry from their professional body, a solicitor is in much the same position as when dealing with the court. A solicitor has a duty to be truthful even to his own detriment, not just a duty to be truthful, but a positive duty to be full and frank and for his answers to be candid as well as truthful. The passage of Hutley J in *Law Society of NSW v. McNamara* quoted by the Authors of the NSW Solicitors Manual is apposite, and the quote is:

> *Though I regard the attempt to deceive the Officers of the Law Society as serious, I regard the attempt to deceive the Statutory Committee as more serious. The assumption which seems somehow to have been made that the accused cannot sometimes be expected to tell the truth to his own detriment in criminal proceedings has no place in proceedings before the Statutory Committee, which is not punitive but for the benefit of the public.*

A solicitor when faced with an inquiry from the Law Society must not give a half reply, a flippant reply or a misleading reply, misleading by omission or commission. It must be a full reply and, if necessary, he must tell the truth to his own detriment. The reply of 23 January 2002 from the Practitioner must be judged by this standard.

There is ample evidence that Mr A was more than a clerk. The evidence shows Mr A was admitted as a solicitor, carried out the work of a solicitor and was held out to people dealing with the firm as a solicitor. He saw clients of the firm, prepared trust deeds, attended to property conveyances, attended at a mediation and a settlement conference, recommended tactics and activities in respect to legal issues, prepared pleadings and made appearances before courts, including the High Court of Australia.

The Practitioner sought to justify labelling these activities as tantamount to the work of a clerk by asserting that he, the Practitioner, was ultimately responsible for his clients' affairs or that the matters were not important. They were no doubt important to the clients.

There was evidence of tension between the complainant S and the practitioner. There was also evidence of animosity between the witness N and the practitioner and animosity between Mr A and the witness N. The Tribunal was urged to treat the evidence from the witnesses S and N with suspicion, particularly where the evidence from those witnesses conflicted with the evidence of the practitioner.

With this in mind, the Tribunal allowed perhaps more cross-examination than was necessary on the issues raised by these witnesses so that their bias, if any, might be laid out.

After examining all of the evidence and the submissions of the parties, the Tribunal finds that it has not had to rely primarily on the oral evidence as the documentary evidence is extensive enough to assist the Tribunal to reach conclusions on the A charges. There is ample evidence that Mr A was much more than the person described in the letter of 23 January 2002.

According to the JRS bill, Mr A performed work on that file until 23 August 2000. According to the S bill, Mr A performed work on that file until February 2001. According to the transcript of proceedings in *SP&G Nominees Pty Ltd v. Stumer*, Mr A appeared before the High Court of Australia on 17 May 2001 for a client of the practitioner's firm.

According to the transcript of proceedings in *GPS First Mortgage Security Pty Ltd v. Lynch*, Mr A appeared before the High Court of Australia for a client of the practitioner's firm. On 31 July 2001, Mr A swore an affidavit filed in the Supreme Court of Queensland in which he describes himself as a solicitor in the employ of W & Co.

These are just a few examples of the documents which set out the real nature of the work performed by Mr A in the period from 1 July 2000 to 13 March 2002 when he did not have a Practising Certificate.

The Tribunal finds that, in his letter dated 23 January 2002, the practitioner falsely described the nature of the work performed by Mr A and that the practitioner knew that the representations in his letter were false and were designed to communicate a less than frank answer to the inquiries of the Society.

The Tribunal finds Charge 2 is proved.

Charge 2A is pleaded in the alternative that the practitioner knowingly falsely represented the nature of A's engagement. Were it necessary to do so, the Tribunal would have been prepared to find that charge proved, but it is not necessary because it was pleaded in the alternative.

The next charge, 2B, alleges that the practitioner provided employment to Mr A to practise as a solicitor knowing he did not have a Practising Certificate between 30 June 2000 and 13 March 2002. The practitioner was at all relevant times aware that Mr A did not have a Practising Certificate.

The Tribunal finds that the work carried out by Mr A during the period 1 July 2000 and 13 March 2002 constituted his practising as a solicitor in terms of the definition contained the *Queensland Law Society Act* and in terms of the case authorities submitted to the Tribunal by the Society. The Tribunal is unable to agree with the interpretation contained in the submissions of the practitioner in relation to section 40 of that Act. That section, in the Tribunal's view, does not result in the conclusion that a person working as an employed solicitor is not practising as a solicitor.

The Tribunal is unable to accept the submission that the practitioner's conduct establishes a genuine and reasonable, but mistaken belief, that Mr A did not require a Practising Certificate as at January 2002. If that belief was genuine and reasonable, the Tribunal would have expected that the practitioner to have set out his arguments fully and frankly to the Queensland Law Society in January 2002. This was not attempted by the practitioner but rather, a misleading and false explanation was provided.

The Tribunal finds that Charge 2B is proved.

The next Charge 2C is in the alternative and relates to supervision. The Tribunal makes no finding on this charge as it is in the alternative.

Lastly, 'The Notice Charge'. The third charge relates to a notice given under section 5H. That section is a machinery provision that allows the Queensland Law Society to properly fulfil its duties to investigate complaints and administer the Act.

Section 5H(3) provides 'if notice is given and failure continues for 14 days, then the practitioner is taken to have committed professional misconduct unless the practitioner has a reasonable excuse.' If the prerequisite is established, then the onus reverts to the practitioner to show a reasonable excuse.

The practitioner argued that the information and documents being sought were subject to legal professional privilege. That claim was without substance and not pursued with. He also argued that the information and documents were confidential and could not be released without the authority of his clients.

His counsel has relied on a variety of case authorities and on learned law texts for the proposition that the names and addresses of clients constitute confidential information which could not be disclosed to the Law Society when investigating a complaint. The Tribunal does not agree that the authorities compel that conclusion.

The information sought by the Law Society is inherently confidential in nature. While there is a potential for the disclosure of this information to persons with no lawful interest in obtaining the information to constitute unprofessional conduct, this cannot be an excuse for refusing to divulge this information to the Law Society in the proper exercise of its lawful functions.

The Tribunal finds that Charge 3 is proven.

## Penalty

The Tribunal has had difficulty deciding as to the appropriate penalty. Personalities in this case have intervened in what was initially a somewhat straightforward transaction investigated following the complaint of S. It has involved five days of hearing, together with some hours of interlocutory skirmishing.

The trust account transaction that started the whole episode was not a very serious matter, rather in the category of an excess of authority or mistake. Money can, not infrequently, be paid into trust for a purpose that fails wholly or partly and, as the Practitioner said on this case, for a purpose that he thought was thwarted and the money falls in the general funds and is made available by the client for other purposes. The expressed trust purpose fails and there is a resulting trust.

It is easy to see how the use of $630.00 for outstanding legal fees after sending a detailed bill could be anticipated. However, that assumption could not have survived the objection in the letter of 9 March 2001. The appropriation was not furtive or hasty, nor does it seem to be part of a systematic system to avoid trust account regulations. It was done some five months after the bill was sent.

The appropriation was done, however, in the face of the objection and as if the law did not apply to the practitioner if it was inconvenient. He has not cooperated at all with the Law Society, which has the obligation to investigate these matters. Even when the problem was plain, he persisted with the obstinate view that he was right.

Findings of guilt on the other charges do give rise to a more serious consideration. Professional misconduct has been found and the Tribunal considers that a significant penalty should be given to act as a deterrent to the solicitor, who gives the appearance of still not believing he has done anything wrong and is likely therefore to re-offend, and as a deterrent to others who may think they can treat the investigations of the Law Society as an avoidable nuisance.

The reputation of the profession is tarnished by this behaviour and the Practitioner cannot enjoy the benefits of being a member of the legal profession without accepting the responsibilities and burdens, including the burden of having to accept a higher standard of conduct than that imposed on the public.

The Tribunal takes into account the submissions made by counsel for the practitioner as to the practitioner's personal circumstances. He has after all been a solicitor for 25 years and in sole practice since 1984 without being investigated by the Law Society.

The Tribunal believes that the practitioner is capable of learning now from his mistakes.

The Tribunal suspends the practitioner from practice for nine months.

The Tribunal has taken into account the submissions by the practitioner as to the charge that was dismissed, but in the circumstances does not consider that the costs saved by that are really of any sizeable quantity and therefore, makes the order that the practitioner be responsible for the payment of the Society's costs in total.

## Complainant

The complainant, Mr S, claimed compensation under section 6R(4) saying he had suffered pecuniary loss because of the practitioner's conduct.

The Tribunal has heard evidence from Mr S, the complainant. The Tribunal is not satisfied that Mr S suffered loss because of the Practitioner's conduct set out in the charge and, consequently, the Tribunal will not make a compensation order.