

In the Matter of Geoffrey Harold Canning Lowes

Case Number: SCT/55

Date of Hearing: 17 June 2002, 20 & 21 June 2002 and 5 August 2002

Appearing Before: Ms C C Endicott (Chairperson/Practitioner Member)

Mr G C Fox (Practitioner Member)

Dr J Lamont (Lay Member)

Penalty: Fined \$15,000.00

Charges

GIF and THF

1. Between in or about February 2000 and in or about January 2001 when acting for GIF and THF in the management of their financial affairs, the Solicitor misappropriated client trust funds of \$5,137.

Particulars

(a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').

(b) At all material times before 17 May 2000 the Solicitor acted for GIF and his wife THF (the clients) an elderly couple in the day to day management of their financial affairs and after 17 May 2000 the Solicitor acted for THF in the day to day management of her financial affairs and the administration of the deceased estate of GIF. This involved the Solicitor from time to time holding trust funds on behalf of his clients in his Firm's general trust account to the credit of his clients' individual trust ledger account.

(c) By letter to the clients dated 23 February 2000 the Solicitor proposed to them that, from that time onwards, the clients should consider paying his Firm a monthly retainer of \$700 to cover all professional time, outlays and disbursements in substitution for the then existing time costing method of charging the clients.

(d) Subsequently the clients agreed to the said proposal to pay \$700 per month.

(e) On 17 May 2000, GIF died and subsequently the cost arrangement of \$700 per month was continued by THF.

(f) In conformity with the new agreed monthly retainer arrangement, the Solicitor became entitled to the following payment for his professional time outlays and disbursements for the period February 2000 to January 2001 (12 months):

February 2000 to June 2000

(GST introduced) – 5 months @ \$700 \$3,500.00

July 2000 to January 2001

– 7 months @ \$700 \$4,900.00

GST for 7 months July 2000

to January 2001 @ 10% of \$4,900.00 \$490.00

Total \$8,890.00

(g) In addition to the said costs entitlement of \$8,890 in particular 1(f), the Solicitor was also entitled to further costs \$300 for work done outside the said monthly retainer agreement so that his total entitlement to costs in the relevant period was \$9,190.

(h) Notwithstanding the Solicitor's entitlement of \$9,190 for the said period February 2000 to January 2001, the Solicitor paid to his firm's general account the sum of \$14,327 from trust funds standing to the credit of his clients' individual trust ledger account, representing an overpayment of \$5,137 (\$14,327 minus \$9,190).

(i) The said overpayment of \$5,137 was made without the knowledge or authority of his clients and constituted a misappropriation of client trust funds.

2. By letter dated 23 February 2000 to his clients GIF and THF, the Solicitor falsely stated that the amount of approximately \$6,500 had been paid to his Firm by way of professional costs in the previous nine months when in fact the true figure was \$12,898 as the Solicitor knew or ought to have known.

Particulars

(a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').

(b) At all material times the Solicitor acted for GIF and his wife THF (the clients) an elderly couple in the day today management of their financial affairs. This involved the Solicitor from time to time holding trust funds on behalf of his clients in his Firm's general trust account to the credit of his clients' individual trust ledger account.

(c) By letter dated 23 February 2000 to his clients, the Solicitor advised, inter alia, that:

'We have reviewed our file for the last nine months during which period we have been managing your financial affairs. We have calculated that an amount of approximately \$6,500 has been paid to us over this period by way of professional costs. This figure has been arrived at by the time J has spent paying accounts and forwarding medical claims. Also there has been additional time involved by G in arranging for funds to be deposited to our account and attending to problems as they arose. We have completed some 20 pages of foolscap writing down all of the attendances we have made during that period of time. We have no objection to continuing this method of billing, however to save us time and you money, we would suggest you consider paying us a monthly retainer thereby doing away with the tedious time recording. If you are agreeable with this, please telephone G to discuss the matter. The figure we had in mind would be \$700.00 per month and this would cover all professional time, outlays and disbursements. It would also help budgeting so that each month we would know exactly how much would be expended and how much would remain in your account. We await your advices.'

(d) In truth, as the Solicitor knew or ought to have known, the true figure for professional costs paid to his Firm from his clients' individual trust ledger account for the said period was not \$6,500 but \$12,898, a difference of \$6,398. Details of the payments are:

Bill of costs date	Original bill of costs held on transaction file	Specific Trust Account Authority Sighted	Professional Costs	Total Bill of Costs
01.07.99	No	No	\$3,750.00	\$4,000.00
19.08.99	Yes	No	\$1,148.00	\$1,148.00
03.09.99	Yes	No	\$560.00	\$610.00
13.09.99	No	No	\$400.00	\$400.00
14.10.99	No	No	\$665.00	\$665.00
03.11.99	Yes	No	\$1,250.00	1,288.00
20.01.00	No	No	\$4,000.00	\$4,000.00
11.02.00	Yes	No	\$750.00	\$750.00
18.02.00	Yes	No	\$375.00	\$375.00
		Total	\$12,898.00	\$13,236.00

WCS

3. On or about 18 July 1997 when acting for JVQ and EJJ in the administration of the Estate of WCS Deceased the Solicitor misappropriated \$750 of client trust funds.

Particulars

- At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust accounts to the credit of his client's individual trust ledger account.
- On or about 18 July 1997, the solicitor transferred trust moneys of \$750 standing to the credit of his client's individual trust ledger account to his general account without the knowledge or authority of his clients and in circumstances when he had no entitlement to that money.
- The said transfer of \$750 constituted misappropriation of client funds.
- On 14 July 2000 the Solicitor repaid the said sum of \$750 to his clients' individual trust ledger account.

In the alternative to Charge No 3

4. On or about 18 July 1997 when acting for JVQ and EJJ in the administration of the Estate of WCS Deceased the Solicitor, in breach of section 8 of the Trust Accounts Act 1973, caused the sum of \$750 to be transferred from his clients' individual trust ledger account to his firm's general account when he was not authorised by law so to do.

Particulars

- At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust accounts to the credit of his client's individual trust ledger account.
- On or about 18 July 1997, the Solicitor transferred trust moneys of \$750 standing to the credit of his clients' individual trust ledger account to his general account in purported payment of professional costs and outlays.
- At the time of the said transfer of the \$750 the Solicitor had not rendered a bill of costs to his client, had not received an authorisation in writing within section 8(1)(c) of the Trust Accounts Act 1973 and was not otherwise authorised by law to effect the transfer.
- On 14 July 2000 the Solicitor repaid the sum of \$750 to his clients' individual trust ledger account.

5. On or about 17 October 1997 when acting for JVQ and EJJ in the administration of the Estate of WCS Deceased the Solicitor misappropriated \$250 of client trust funds.

Particulars

- At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his client's individual trust ledger account.
- On or about 17 October 1997, the solicitor transferred trust moneys of \$250 standing to the credit of his client's individual trust ledger account to his general account without the knowledge or authority of his clients and in circumstances when he had no entitlement to that money.
- The said transfer of \$250 constituted misappropriation of client funds.
- On 14 July 2000 the Solicitor repaid the said sum of \$250 to his clients' individual trust ledger account.

In the alternative to Charge 5

6. On or about 17 October 1997 when acting for JVQ and EJJ in the administration of the Estate of WCS Deceased, the Solicitor in breach of section 8 of the Trust Accounts Act 1973, caused the sum of \$250 to be transferred from his clients' individual trust ledger account to his firm's general account when he was not authorised by law so to do.

Particulars

- (a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- (b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his clients' individual trust ledger account.
- (c) On or about 17 October 1997, the Solicitors transferred trust moneys of \$250 standing to the credit of his clients' individual trust ledger account to his general account in purported payment of professional costs and outlays.
- (d) At the time of the said transfer of \$250 the Solicitor had not rendered a bill of costs to his clients, had not received an authorisation in writing within section 8(1)(c) of the Trust Accounts Act 1973, and was not otherwise authorised by law to effect the transfer.
- (e) On 14 July 2000 the Solicitor repaid the said sum of \$250 to his clients' individual trust ledger account.

7. On or about 16 January 1998 when acting for JVQ and EJJ in the administration of the Estate of WCS Deceased the Solicitor misappropriated \$200 of client trust funds.

Particulars

- (a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- (b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his client's individual trust ledger account.
- (c) On or about 16 January 1998, the Solicitor transferred trust moneys of \$200 standing to the credit of his clients' individual trust ledger account to his general account without the knowledge or authority of his clients and in circumstances when he had no entitlement to that money.
- (d) The said transfer of \$200 constituted misappropriation of client funds.
- (e) On 14 July 2000, the Solicitor repaid the said sum of \$200 to his clients' individual trust ledger account.

In the alternative to Charge 7

8. On or about 16 January 1998 when acting for JVQ and EJJ in the administration of the estate of WCS Deceased, the Solicitor, in breach of section 8 of the Trust Accounts Act 1973, caused the sum of \$200 to be transferred from his clients' individual trust ledger account to his firm's general account in payment of professional costs and outlays.

Particulars

- (a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- (b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his client's individual trust ledger account.
- (c) On or about 16 January 1998 the Solicitor transferred trust moneys of \$200 standing to the credit of his clients' individual trust ledger account to his general account in purported payment of professional costs and outlays.
- (d) At the time of the said transfer of the \$200 the Solicitor had not rendered a bill of costs to his client, had not received an authorisation in writing within section 8(1)(c) of the Trust Accounts Act 1973 and was not otherwise authorised by law to effect the transfer.
- (e) On 14 July 2000 the Solicitor repaid the said sum of \$200 to his clients' individual trust ledger account.

9. On or about 29 January 1999, when acting for JVQ and EJJ in the administration of the estate of WCS Deceased, the Solicitor misappropriated \$350 of client trust funds.

Particulars

- (a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').
- (b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his client's individual trust ledger account.
- (c) On or about 29 January 1999, the Solicitor transferred trust moneys of \$350 standing to the credit of his clients' individual trust ledger account to his general account without the knowledge or authority of his clients and in circumstances when he had no entitlement to that money.
- (d) The said transfer of \$350 constituted misappropriation of client funds.
- (e) On 14 July 2000 the Solicitor repaid the said sum of \$350 to the clients' individual trust ledger account.

In the alternative to Charge 9

10. On or about 29 January 1999, when acting for JVQ and EJJ in the administration of the Estate of WCS deceased the Solicitor, in breach of section 8 of the Trust Accounts Act 1973, caused the sum of \$350 to be transferred from his clients' individual trust ledger account to his firm's general account when he was not authorised by law so to do.

Particulars

- (a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').

(b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate and from time to time held trust funds on behalf of his clients in his firm's general trust account to the credit of his client's individual trust ledger account.

(c) On or about 29 January 1999, the Solicitor transferred trust moneys of \$350 standing to the credit of his clients' individual trust ledger account to his general account in purported payment of professional costs and outlays.

(d) At the time of the said transfer, the Solicitor had not rendered a bill of costs to his client, had not received an authorisation in writing within section 8(1)(c) of the Trust Accounts Act 1973 and was not otherwise authorised by law to effect the transfer.

(e) On 14 July 2000 the Solicitor repaid the said sum of \$350 to his clients' individual trust ledger account.

11. When acting for JVQ and EJJ in the administration of the Estate of WCS Deceased the Solicitor was guilty of undue delay.

Particulars

(a) At all material times the Solicitor was the sole proprietor of the legal practice P&L ('the Firm').

(b) At all material times the Solicitor acted for JVQ and EJJ (the clients) the executors of the Estate of WCS deceased in the administration of her estate.

(c) Part of the assets of the deceased's estate was an interest in fee simple in her residence at Coorparoo ("the no.1 property") Brisbane and a one-third interest together with JVQ and EJJ as devisees in trust under the Will of EMQ deceased in a property situated at Coorparoo ("the no.2 property").

(d) In relation to the no.1 property the Solicitor facilitated the execution by the Executors on 23 February 1996 of an application for Transmission by Death of the land to the executors yet that application was not lodged in the Land Title Registry until 6 March 2001, a delay of over 5 years.

(e) The said Transmission by Death No 704625939 was requisitioned by the Land Title Registry on 13 March 2001, the requisition allowing 4 weeks for it to be answered. The Solicitor failed to answer the requisition by the original due date. Rather:

(i) by a facsimile of 10 April 2001, the Solicitor requested an extension of time to answer it;

(ii) that extension was granted on 12 April 2001;

(iii) by a letter dated 17 May 2001, delivered to the

Registry on 18 May 2001, the Solicitor requested a further extension of time to answer it;

(iv) that extension was granted on 22 May 2001;

(v) by a letter delivered to the Registry on 22 June 2001, the Solicitor requested a further extension of time to answer it;

(vi) that extension was granted on 22 June 2001;

(vii) by a facsimile of 20 July 2001, the Solicitor requested a further extension of time to answer it;

(viii) that request was granted on 23 July 2001; and

(ix) the requisition was finally answered on 1 August 2001 and the application was then registered.

(f) In relation to the no.1 property, the following documents were prepared and lodged by the Solicitor in the Land Registry Office:

Document	Date of Execution	Date of Lodgment
Request to register Charge No 704625880;	26 June 1996	6 March 2001
Request to register Record of Death No 704625884	26 June 1996	6 March 2001
Transfer No 704625888	26 June 1996	6 March 2001
Application for Title No 704625897	26 June 1996	6 March 2001
Transmission Application No 704625910	26 June 1996	March 2001

(g) The following is the history of requisitions on the abovementioned documents:

(i) as to Charge No 704625880:

(A) the requisition issued 13 March 2001 (on the basis the dealing was not one capable of registration and was required to be withdrawn from registration) allowing 4 weeks for it to be answered;

(B) requests by the Solicitor for extensions of time to answer the requisition were made and granted as follows:

Date of request	Date granted
10 April 2001	12 April 2001
17 May 2001	22 May 2001
20 June 2001	22 June 2001
20 July 2001	23 July 2001
1 August 2001	2 August 2001

(C) the requisition not having been answered at 17 September 2001, the dealing was rejected on that date;

(ii) as to Record of Death No 704625884:

(A) no requisition issued;

(B) registration was dependent on the abovementioned dealing No 704625880, and the dealing was rejected on 18 September 2001 following rejection of dealing No 704625880;

(iii) as to Transfer No 704625888:

(A) the requisition was issued on 13 March 2001 (on the basis that the words 'since deceased' should be added after the name of WCS) allowing 4 weeks for it to be answered;

(B) requests by the Solicitor for extensions of time to answer the requisition were made

and granted on the following dates:

Date of request	Date granted
10 April 2001	12 April 2001
20 June 2001	22 June 2001
20 July 2001	23 July 2001
1 August 2001	2 August 2001

(C) the requisition not having been answered at 17 September 2001, the dealing was rejected on that date;
(iv) as to Application for Title No 704625897:

(A) the requisition issued on 13 March 2001 (on the basis that it appeared the dealing had been lodged in the incorrect order and that a letter requesting withdrawal and reentry to follow transmissions by death No 704625910 was required, and that in addition it might require amendment, as to which the Solicitor was referred to the requisition on that dealing) allowing 4 weeks for it to be answered;

(B) requests by the Solicitor for extensions of time to answer the requisition were made and granted on the following dates:

Date of request	Date granted
17 May 2001	22 May 2001
1 August 2001	2 August 2001

(C) the requisition not having been answered at 17 September 2001, the dealing was rejected on that date;
(v) as to Transmission by Death No 704625910:

(A) the requisition issued on 13 March 2001 (on the basis the intent of the dealing was unclear, inconsistent with transfer No 704625888, apparently in the wrong form (or that the applicants under it were wrong) and that the dealing was or might be incapable of registration, in which case it should be fully withdrawn) allowing 4 weeks for it to be answered;

(B) requests by the Solicitor for extensions of time to answer the requisition were made and granted on the following dates:

Date of request	Date granted
10 April 2001	12 April 2001
17 May 2001	22 May 2001
20 June 2001	22 June 2001
20 July 2001	23 July 2001
1 August 2001	2 August 2001

(C) the requisition not having been answered at 18 September 2001, the dealing was rejected on that date.

(h) Delays in finalising the above transaction constituted undue delay on the part of the Solicitor.

Appearances (17 June 2002)

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

Mr D G Searles, Solicitor of Messrs McCullough Robertson Solicitors.

(b) For the Practitioner:

Mr M P Quinn, Solicitor of Messrs Gilshenan & Luton Solicitors.

Findings and Orders

1. The Tribunal orders that the name of the Practitioner not be published in the Law List of the Courier-Mail but instead a reference to "in re a practitioner".

2. The Tribunal further orders that costs of this application be costs in the cause.

Reasons

The practitioner makes an application for an Order that identifying details of the practitioner be not published in the daily Law List in the Courier-Mail when this matter comes up for hearing later this week.

The practitioner's representative has provided affidavit material which establishes that the practitioner is a member of a family that has a very distinguished legal practitioner at its head, Mr HL. Mr L Senior, on the material put before the Tribunal, is very gravely ill and is near death. Despite his severe health position at the present time, the evidence also establishes that he takes a keen daily interest in legal affairs, to the extent that he reads the daily Law List and discusses the Law List and other matters with his son when he visits him in the evenings. The affidavit material from the doctor, Dr M, and from the practitioner Mr GL, indicates that Mr L Senior is likely to be distressed by news of the proceedings taken by the Law Society against his son, and that his health may well be prejudiced due to the information being relayed to him.

Under the Queensland Law Society Act 1952, the provisions in section 6L require the Tribunal hearings to be held in public, unless the Tribunal orders otherwise. It has always been the practice of the Tribunal to take great note of the requirement that the hearings be held in public, and the Tribunal is very reluctant to make orders suppressing identification or restricting publication of matters before it, as it is no doubt in the public interest that matters dealing with practitioners are dealt with openly and in the glare of public scrutiny. However, in this case the information put before the Tribunal is quite compelling, and it would be distressing should any adverse health impact be caused to a senior practitioner through no fault of his own, but due to distressing news being learnt about his son. Without pre-empting in any way the decision which will have to

be made by the full Tribunal when the matter comes on for hearing on Thursday, it is my view as Chair of the Tribunal that the practitioner has in this case established exceptional reasons why the publication of the practitioner's name should be suppressed on the Law List, and therefore I direct that in this particular case, the name of the practitioner not be published in the Law List, but instead, a reference such as "in re a practitioner" would be adequate to notify the public that a hearing is taking place, and would otherwise fit in with the spirit of the Act, if not the direct letter, that the matter be held in public.

Appearances (20 & 21 June 2002 and 5 August 2002)

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

Mr M Burns of Counsel instructed by Messrs McCullough Robertson, Solicitors.

(b) For the Practitioner:

Mr A J Glynn of Senior Counsel instructed by Messrs Gilshenan & Luton, Solicitors.

Findings and Orders

1. The Tribunal granted leave to the Applicant to amend Charge 6 in the first line by adding "1997" after the words "On or about 17 October".
2. The Tribunal granted leave to the Respondent to file the Affidavit of MRHD sworn 13 June 2002 without proper exhibit markings.
3. Following oral application made on behalf of the Respondent, the Tribunal orders the restriction of publication of evidence given before the Tribunal and restricts the publication of any identifying details relating to the Practitioner on an interim basis until the end of the hearing and, at that stage, the parties may reapply for any further orders.
4. The Tribunal finds the charges set out in the Notice of Charge, save for charge 2, proven to the extent that they do not amount to dishonesty.
5. The Tribunal finds that the matters proved constitute unprofessional conduct and the Tribunal finds the Practitioner guilty of unprofessional conduct.
6. The Tribunal orders that the Practitioner pay a monetary penalty of \$15,000.00 to the Fund.
7. The Tribunal further orders that the Practitioner attends and satisfactorily completes the next available practice management course conducted by the Queensland Law Society Incorporated.
8. The Tribunal further orders that the Practitioner's files, accounts and systems be audited by a senior practitioner appointed by the Queensland Law Society at the cost of the Practitioner, the first of such audits to be undertaken by 31 December 2002 and the second and final audit by 31 December 2003. The Tribunal orders that the senior practitioner must report on the audits to the Queensland Law Society Incorporated and to the Practitioner within 21 days after the completion of the audits.
9. The Tribunal further orders that the Practitioner pay the costs of the Queensland Law Society Incorporated, including the costs of the Recorder and the Clerk of the Tribunal, of and incidental to the charges, the costs to be agreed between the parties, but failing agreement to be assessed by Monsour Legal Costs Pty Ltd.
10. The Tribunal further orders that the Practitioner pay the monetary penalty to the Fund within six months of today's date and that the Practitioner pay the costs as ordered within 18 months from the date of agreement or assessment of those costs.
11. The tribunal further orders that publication of the name of the Practitioner be restricted until 31 December 2002, or until the death of the Practitioner's father, if that occurs within the period nominated provided that the findings and evidence of the Tribunal shall be made available to the persons named in the charges, despite the restriction made by this order.
12. The Tribunal orders that this restriction of publication will not restrict the filing of the orders relating to these charges in the Supreme Court of Queensland in accordance with the requirements of the Queensland Law Society Act.

Reasons

Application under section 6L of the Queensland Law Society Act

An application has been made to the Tribunal under section 6L of the Queensland Law Society Act for an order prohibiting the publication of these proceedings or any outcome of these proceedings until such time as the father of the Practitioner has passed away. The Tribunal has given consideration to the submissions of the Practitioner and also the views expressed by the Queensland Law Society.

The tribunal finds that, in this case, there has been an appropriate reason given which should result in the exercise of some discretion by this Tribunal in relation to the publication of its proceedings in this case.

Hearing of Charges

The Charges arise out of work undertaken by the practitioner on behalf of the F family and the S family over some years.

Dealing firstly with Charge 2, it has been suggested that the letter to Mr and Mrs F has been written with an intent to mislead. There is no doubt that the reference to the amount charged in the previous nine months is false. We are not, however, prepared to find that it was written fraudulently. The purpose of the letter was to persuade the F's to enter into a retainer. The error rendered the letter in fact less persuasive of its intent. There is no doubt that the letter was written carelessly. This behaviour is reflective of the practitioner's conduct in relation to the matters the subject of these Charges.

Charge 11 relates to undue delay in the administration of an estate. The practitioner concedes that there has been undue delay.

The balance of the Charges relate to the transfer of funds from the practitioner's Trust Account to his Business Account. We find that the transfers referred to in the charge have been made without authority, and in circumstances where the Practitioner was not entitled to the funds. The Society invites us to find that the transfers were made dishonestly. We have heard the various explanations advanced by the practitioner and have had the opportunity to observe him for a lengthy period under cross-examination. We have been taken through the office procedures and accounting systems in place. The evidence indicates that Mr F was astute and commercially aware. The practitioner's conduct of Mrs F's affairs had been reviewed regularly to a greater or lesser extent by her chartered accountant and her son-in-law, who also impressed us as a competent guardian of his mother-in-law's interests. Neither party has called any of the beneficiaries of the funds to assist the Tribunal. We have taken into account the remarks of the High Court in *Brigginshaw*, and in particular the remarks of Dixon J as to what is required for the reasonable satisfaction for the Tribunal. At page 362 he says:

But reasonable satisfaction is not a state of mind that is attained or is established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters, reasonable satisfaction should not be produced by inexact proofs, indefinite testimony or indirect references.

On balance, and not without some difficulty, we are not prepared to find that the practitioner acted dishonestly. The circumstances in which the transfers occurred were, however, matters under the practitioner's control, poor office systems, poor accounting systems and his own carelessness. In the circumstances, we find the Charges, save for Charge 2, proven to the extent that they do not amount to dishonesty.

In view of the findings, it is not necessary for us to deal with the Charges framed in the alternative.

We find the Practitioner guilty of unprofessional conduct.

The Tribunal has made findings of unprofessional conduct against the practitioner, in that the practitioner has failed to exhibit reasonable standards of competence and diligence in the conduct of his practice. The Tribunal considers it appropriate that steps are taken by way of penalty to protect the clients of the practitioner against any repetition of that unsatisfactory conduct. Taking into account the submissions made by Mr Glynn and the Society in relation to the costs, this Tribunal made its findings due to the lengthy testing of all the evidence that occurred through the hearing.

It is the Tribunal's view in those circumstances that the costs in this case should follow the event. The Tribunal has taken into account the submissions made on behalf of the practitioner and agrees that the practitioner should be allowed substantial time to pay the monetary penalty and the costs which will flow from the orders of the Tribunal.

Further Application under section 6L of the Queensland Law Society Act

The Tribunal has been asked by the practitioner to restrict publication of the name of the practitioner until the death of the practitioner's father. The Tribunal has evidence that the practitioner's father is gravely ill with cancer. His health has deteriorated markedly since his discharge from hospital in September 2001. The evidence is that on a couple of occasions the death of the practitioner's father was expected to occur in a matter of days. The Tribunal is aware of the obligations on the Tribunal to conduct its hearings openly and in the eye of the public. However, the Queensland Law Society Act does permit orders restricting publication and the Court of Appeal has recognised in cases such as *Atkins* that there are circumstances when publication of evidence put before the Tribunal should be restricted. In particular, in the matter of *Atkins v. Queensland Law Society*, the Court of Appeal particularly in the joint judgment of their Honours Pincus and Atkinson commented as follows:

One can understand the anxiety of a solicitor in the appellant's position and appreciate that he may suffer great harm, even if the Charges are dismissed.

The section 6L contemplates that prima facie hearings must be held in public, and that implies that a particular reason not applicable to the general run of cases must be shown to exist justifying an order under that section.

The Tribunal considers that there is a reason outside the general run of cases to warrant the restriction of the publication of the practitioner's name in this case, namely the grave illness of the Practitioner's father. The Tribunal is satisfied that the interests of the clients of the Practitioner, both present and potential, and the interests of the public, are already protected by the orders made by the Tribunal for the audit of the Practitioner's practice and for the compulsory attendance of the Practitioner at the practice management course conducted by the Queensland Law Society.

However, in this case there should be a definite end point to the period of restriction of the publication of the practitioner's name. The Tribunal considers that it is appropriate to restrict the publication of the name of the Practitioner until 31 December 2002, or until the death of the Practitioner's father, if that occurs within the period nominated. The findings and evidence of the Tribunal shall be made available to the persons named in the charges, despite the restriction made by this order.

This order, however, will not restrict the filing of the orders relating to these charges in the Supreme Court of Queensland in accordance with the requirements of the Queensland Law Society Act.

Appeal

The Queensland Law Society has lodged an appeal with the Court of Appeal. A date has not yet been set for the appeal hearing.