

DISCIPLINARY HEARING

REPORT OF PROCEEDINGS

The Legal Practitioners Disciplinary Tribunal heard a Reference against Patrick Edward Mullally alleging that he was guilty of illegal conduct in that he stole the sum of \$26,678.23 in money, the property of a company and being the amount of a general deficiency. After the trial in the District Court before a judge and jury, Mr Mullally was convicted of the offence of stealing, and on 22 October 1999 was sentenced to a term of imprisonment for two years and made eligible for parole. Mr Mullally advised the Tribunal that he had applied for leave to extend the time in which to appeal that conviction.

The circumstances of the illegal conduct are that in October or early November 1992 Mr Mullally, then a legal practitioner, (but subsequently suspended from practice in 1994), was given a number of cheques by his client totalling the amount of \$26,678.23. The cheques were placed in the practitioner's trust account and were monies due to a proprietary company from customers of the client's business activities through the proprietary company. The monies were paid into the practitioner's trust account to be held pending the outcome of attempts by him to set aside the appointment of a receiver and manager of the business. The practitioner on a number of occasions explained to the lay client that the money belonged to the client's company and the bank through its receiver, and could not be used by the client to pay off his personal debts. However, between December 1992 and December 1993 the practitioner withdrew sums totalling the above amount from his trust account and applied that money to, what he subsequently claimed was, satisfaction of legal costs.

After several requests, a bill of costs was rendered by the practitioner some time in 1994, but despite requests for those costs to be taxed, and for reasons as to which the learned trial Judge said “none of which are entirely clear”, the bills were not taxed. The learned trial Judge found that the practitioner was entitled to charge some costs, the extent of which was not known, but irrespective of that matter, it is clear that by the jury’s verdict, the funds in the practitioner’s trust account were to the practitioner’s knowledge, not available to meet the lay client’s personal debts.

The Tribunal found the practitioner guilty of the illegal conduct as alleged and ordered that he pay the costs of the Legal Practitioners Complaints Committee to be taxed by a Taxing Officer of the Supreme Court on the relevant Supreme Court scale, if not otherwise agreed. The Tribunal reached the conclusion that the conviction, and the facts which led to it, disclosed that the practitioner was not a fit and proper person to practise and determined to make and transmit a report to the Full Court with a view to the practitioner’s being struck off the Roll or otherwise dealt with as the Court may think fit.

The Hon. Mr BW Rowland, QC
Chairman
Legal Practitioners Disciplinary Tribunal
February 2001