

# SUPREME COURT OF QUEENSLAND

CITATION: *Williams v The Council of the Queensland Law Society Inc*  
[2005] QCA 388

PARTIES: **GREGORY PAUL WILLIAMS**  
(applicant/appellant)  
**v**  
**THE COUNCIL OF THE QUEENSLAND LAW  
SOCIETY INCORPORATED**  
(respondent/respondent)

FILE NO/S: Appeal No 4038 of 2005  
Solicitors Complaints Tribunal Charge No 119 of 2004

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING  
COURT: Solicitors Complaints Tribunal

DELIVERED ON: 21 October 2005

DELIVERED AT: Brisbane

HEARING DATE: 10 October 2005

JUDGES: de Jersey CJ, Jerrard JA and Douglas J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the orders made

ORDERS: **1. Declare that the appellant was suspended from  
practice for the periods:**  
**(a) 1 August 2004 to 16 September 2004**  
**(b) 2 February 2005 to 21 April 2005**

**2. Declare that the appellant has been suspended from  
practice since 21 April 2005, and that such suspension  
will continue until 21 October 2005**

**3. Allow the appeal to the extent of varying the orders of  
the Solicitors' Complaints Tribunal made on 30 April  
2005 by deleting from para six, "12 months", and  
inserting in lieu, "six months on and from 21 April  
2005"**

**4. No order as to costs**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS –  
MISCONDUCT, UNFITNESS AND DISCIPLINE –  
DISCIPLINARY PROCEEDINGS – STATUTORY  
PROCEEDINGS – QUEENSLAND – the appellant pleaded  
guilty to five charges of professional misconduct or  
unprofessional conduct or practice regarding trust accounts –  
on 30 April 2004 the Solicitors' Complaints Tribunal

imposed a financial penalty and costs to be paid to the Queensland Law Society (“QLS”) in 12 equal monthly instalments – also ordered the appellant to complete practice modules and install trust accounts computer system – Tribunal also made an order of 12 months suspension to be activated if the appellant defaulted in performing any of the terms of the orders – on 15 September 2004 the appellant had not yet paid any of the instalments and successfully sought variations of the orders by the Tribunal – the Tribunal also stated that the appellant had undertaken to keep in weekly contact with the QLS – on 18 April 2005 the QLS informed the appellant that he had been deemed suspended from practice as of 2 February 2005 due to a dishonoured cheque and lack of contact with the QLS – on 21 April 2005 the appellant paid the full amount owed and applied to vary the activated suspension order to avoid suspension by paying the full amount owed by that date – Tribunal dismissed that application – whether the Tribunal erred in law in deciding that the appellant had been required to keep in weekly contact with the QLS

PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – DISCIPLINARY ORDERS – SUSPENSION – by 21 April 2005 the appellant had completed the stipulated practice modules, installed the required computer system and paid the full penalty and costs – the Tribunal’s suspension order to be activated upon the appellant’s default was self-executing – in dismissing the appellant’s application on 21 April 2005 the Tribunal did not declare that any period of suspension from practice had already been served – whether the appellant should have been declared to have been suspended for two separate periods totalling approximately four months prior to 21 April 2005 – whether a suspension for a further 12 months from 21 April 2005 was manifestly excessive

*Legal Profession Act 2004 (Qld)*

*Queensland Law Society Act 1952 (Qld)*, s 5P, s 6, s 6R, s 6V, s 6Z, s 12

*Trust Accounts Act 1973 (Qld)*, s 7, s 8, s 16(1)

*Trust Accounts Regulation 1999 (Qld)*, s 10(1), s 12(1)

*Uniform Civil Procedure Rules 1999 (Qld)*, r 766

COUNSEL: S P Coates for the appellant  
M J Burns for the respondent

SOLICITORS: The appellant appeared on his own behalf  
Queensland Law Society for the respondent

[1] **de JERSEY CJ:** I have had the advantage of reading the reasons for judgment of Jerrard JA, with which I agree. It is important that the judgment of the court in this appeal leave no uncertainty as to the periods for which the appellant has been suspended, and will be suspended.

- [2] It seems clear he was suspended from practice for the following periods:
1. 1 August 2004 until 16 September 2004 (consistently with the view expressed on 16 September 2004 by the Solicitors' Complaints Tribunal); and
  2. 2 February 2005 to 21 April 2005 (2 February 2005 being the date of the dishonour of the cheque for the sum of \$2,200).
- [3] For present purposes, the two days' delay in the Law Society's receipt of the cheque of \$2,000 on 2 December 2004 may be ignored as *de minimis*.
- [4] Any vulnerability of the appellant for having practised during periods of suspension is a separate issue which cannot regularly be considered in our disposition of the appeal.
- [5] The court should in my view make declarations that the appellant was suspended from practice for the periods 1 August 2004 to 16 September 2004, and 2 February 2005 to 21 April 2005.
- [6] He has of course been suspended, also, since 21 April 2005, when the Tribunal gave its decision on the application which is the subject of this appeal. Both the appellant and the Law Society are presently proceeding on the basis that, subject to any order of this court, the 12 month suspension provided for by para six of the orders made originally by the Tribunal on 30 April 2004 began on 21 April 2005. In the circumstances set out above, that is not correct.
- [7] I agree with the course proposed by Jerrard JA, that is, to vary para six of those orders made on 30 April 2004 to provide for the appellant's suspension for six months from 21 April 2005, the date of the latest hearing by the Tribunal. That would appropriately allow for the previous periods of suspension, and respect the intention behind the Tribunal's original orders. But to avoid any further uncertainty, there should also be a declaration that the appellant has since 21 April 2005 been suspended from practice, that suspension to continue for a period of six months from 21 April 2005.
- [8] The orders which I consider should be made are these:
1. Declare that the appellant was suspended from practice for the periods:
    - (a) 1 August 2004 to 16 September 2004;
    - (b) 2 February 2005 to 21 April 2005.
  2. Declare that the appellant has been suspended from practice since 21 April 2005, and that such suspension will continue until 21 October 2005.
  3. Allow the appeal to the extent of varying the orders of the Solicitors' Complaints Tribunal made on 30 April 2004 by deleting from para six, "12 months", and inserting in lieu, "six months on and from 21 April 2005".
  4. No order as to costs.

- [9] **JERRARD JA:** This appeal filed 19 May 2005 is against a decision of the Solicitors' Complaints Tribunal made on 21 April 2005, on the grounds that the decision resulted in a manifestly excessive penalty being imposed on the appellant solicitor, Mr Williams. Mr Williams argues that the decision was based on an error of law, and that this Court should therefore re-exercise a discretion that the Tribunal exercised on 21 April 2005. The actual orders sought in this appeal are:
- (i) That Orders 2 and 3 of the Findings and Orders of the Solicitors' Complaints Tribunal in Charge No 119 dated 21 April 2005 be discharged; and
  - (ii) That the Findings and Orders of the Solicitors' Complaints Tribunal in Charge No 119 dated 30 April 2004 be varied by deleting Order 6 thereof and replacing it with a different order.
- [10] Despite that latter application, no appeal has been brought against the orders made by the Tribunal on 30 April 2004, either as originally made or as varied on a subsequent successful application by Mr Williams. Section 6Z of the *Queensland Law Society Act 1952* (Qld) ("the Law Society Act") provides that a party dissatisfied with a decision of the Solicitors' Complaints Tribunal established by s 6 of that Act may appeal the decision to the Court of Appeal, but the appeal must be made within 28 days after the Tribunal's order is made. That provision undoubtedly explains why there is no appeal *per se* from the decision of the Tribunal made on 30 April 2004.
- [11] The *Legal Profession Act 2004* (Qld) for the most part came into force on 1 July 2004, and that Act inserted s 5P in the Law Society Act, which section provides that if a hearing has, under the Tribunal's rules, started in the Tribunal on or before the commencement of (that section), it must continue to be dealt with under Part 2A of that Act. That part provides for hearings before the Solicitors' Complaints Tribunal, although an entirely different regime for dealing with complaints against legal practitioners is provided for in the *Legal Profession Act 2004*. The Tribunal relied on s 5P for its jurisdiction after 1 July 2004 to make orders in proceedings arising from complaints against Mr Williams. No issue was taken before the Tribunal or on this appeal as to the Tribunal's jurisdiction to hear the application, or its power to delete or vary its own earlier orders.

#### **The April 2004 hearing and orders**

- [12] On 10 December 2003 the Council of the Queensland Law Society Inc ("the Law Society") gave Mr Williams notice that it required him to answer five charges before the Tribunal, and each charge alleged professional misconduct or unprofessional conduct or practice by him. On 30 April 2004 Mr Williams, through his solicitor, pleaded guilty to each charge, and neither supported nor opposed the proposition that the conduct admitted amounted to professional misconduct. As described in the formal order dated 30 April 2004 signed by the presiding member and stating the Tribunal's findings in relation to the facts, in accordance with s 6V of the Law Society Act, Mr Williams had admitted by those pleas an offence against s 16(1) of the *Trust Accounts Act 1973* (charge 1), an offence against s 12(1) of the *Trust Accounts Regulation 1999* (charge 2), breaches of s 7 and s 8 of the *Trust Accounts Act* (charge 3), breaches of s 8(1) of the *Trust Accounts Act* and s 10(1) of the *Trust Accounts Regulation* (charge 4), and failing to keep, operate,

and conduct his trust accounts in a proper and professional manner, in breach of the *Trust Accounts Act* and *Trust Accounts Regulation* (count 5).

- [13] Mr Williams' conduct involved his lodging late audit reports of his trust accounts for the years 2002 and 2003; his failing to undertake monthly trust account reconciliations as soon as practicable after the end of each month; receiving or transferring clients' funds directly to his general account or disbursing them to third parties without lawful authority to do so; and his drawing on the trust account when the withdrawal was more than the cleared funds available in the particular account for the particular matter. That conduct all occurred between April 2001 and late 2003. The amounts were all very modest ones. The manner in which one breach led to another was well described in the Tribunal's reasons in these terms:

“For example, four instances of trust moneys being withdrawn other than by a trust cheques [sic]; three instances of failing to deposit trust moneys after issuing a trust account receipt; failing to apportion multiple drawings for costs and outlays in the cash book and failing to then allocate each drawing to individual trust accounts; failure to maintain a trust account ledger after trust funds had been received and failing to keep a trust account journal or record transfers of funds between trust ledgers.”

- [14] The Tribunal also stated in its reasons that Mr Williams was 45, had been admitted to practice for a period for 20 years, and had practiced on his own account since March 1989. The Tribunal noted that he had demonstrated a laudable community involvement, including a commitment to pro-bono work and to Legal Aid, that there had been no pecuniary loss by any of his clients, that there was no claim for compensation by any of them, and that all deficiencies had been restored. It remarked that it was obvious that Mr Williams' difficulties were created by his continued and persistent failure to reconcile his trust accounts and issue receipts, failure to bank, and failure to post transactions to trust account ledgers. The Tribunal concluded that he had demonstrated a capacity for recklessness and carelessness, and it proposed orders that the Tribunal considered should constitute both a deterrent and an appropriate penalty for his conduct; in which his being a sole practitioner had compounded his carelessness.

- [15] The Tribunal exercised its powers under s 6R of the Law Society Act by making orders, inter alia, that Mr Williams pay a penalty to the Fund<sup>1</sup> of \$10,000 (order 2); that Mr Williams complete the next available Trust Account Module of the Practice Management course conducted by the Queensland Law Society, and the next Professional Standards Module of that course; that he provide audit reports on a quarterly basis commencing on 30 June 2004 for a two year period at his own expense; and that he install and operate a computerised Trust Account system at his own expense within three months “from today” (30 April 2004). The Tribunal also made orders 6, 8, and 9, each of which are relevant to this appeal.

- [16] Order 6 provided:

“6. The Tribunal orders that the Practitioner be suspended from practice for a period of 12 months, such suspension not to become operative unless the Practitioner defaults in the performance of any

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<sup>1</sup> The Legal Practitioners' Fidelity Guarantee Fund established under s 12 of the *Queensland Law Society Act 1952*

of the terms of this order or is convicted by this Tribunal of any charge relating to the administration of his Trust Account within two years from today.

8. The Tribunal orders that the Practitioner pay the penalty by 12 equal monthly instalments, the first of which is to commence on 31 July 2004.

9. The Tribunal further orders that 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, or failing agreement, to be assessed by Monsour Legal Costs Pty Ltd and that those costs as agreed or assessed be paid by 12 equal monthly instalments, the first of which is to commence on 31 July 2004.

### **The September 2004 hearing and orders**

- [17] On 15 September 2004, and after the *Legal Profession Act 2004* had come into force, Mr Williams applied to the Tribunal for orders deleting and replacing the original orders numbered 7, 8, and 9, and for a declaration that he had not been suspended from practice from 1 August 2004. On 16 September 2004 the Tribunal heard his application, and counsel for Mr Williams informed it, relying on an affidavit from Mr Williams, that although Mr Williams had not previously paid any of the ordered monthly instalments of the penalty or costs in compliance with the orders, he had a cheque available to pay \$2,000 that day into the fund, \$1,000 being on account of the penalty and \$1,000 being for costs. He would be able to pay the balance (which would be \$19,000) in one lump sum from the sale proceeds of land he was selling, and the sale of which he had previously expected to complete during early July 2004. He had paid a deposit for a computerised Trust Account system on 10 September 2004, and expected to receive it and have it operational by at the latest mid-October 2004.
- [18] Counsel explained that Mr Williams' difficulties had been caused because he underestimated his ability to sell that property, not because of price, but because of local government's requirements. Counsel conceded that "technically" Mr Williams had been "operating without a certificate" since 1 August 2004, and the Tribunal's formal reasons include the statement<sup>2</sup> that because of the practitioner's failure to comply with the ordered conditions, and because the Tribunal's original order was self-executing, Mr Williams *had* been suspended as a result of that order as and from 1 August 2004.
- [19] The orders Mr Williams asked for in September 2004 were an order requiring that he install and operate a computerised Trust Account system within seven months from "today" (i.e. seven months from 30 April 2004), an order replacing the existing order 8 with an order that read "The Tribunal orders that the practitioner pay the penalty by 12 equal monthly instalments, the first of which is to commence on 31 October 2004", and that order 9 be deleted and replaced with an order requiring that the first payment of the 12 monthly equal instalments of assessed costs "commence" on 31 October 2004. Counsel for Mr Williams informed the Tribunal:

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<sup>2</sup> At AR 345 and 368

“My client has put forward the proposition that if the Tribunal does grant an extension, he will undertake to have weekly contact with the Society on each and every matter subject of the orders to ensure that the Society is aware and to ensure that he is aware that the orders can be and will be complied with, and, if there is a problem and an issue which is beyond his control, all parties would then be in a position to know about that and to determine a way to overcome any issues if they can be overcome.”

Counsel added a little later that “...we would ask for an extension of the time, with the proviso that he contact the Law Society weekly with his efforts to comply with those orders”.<sup>3</sup> Those proffered undertakings were unambiguously given regarding compliance with all orders, singling out for special mention those for which the variation or extension was sought.

[20] Counsel for the Law Society opposed those applications, complaining that Mr Williams had written to the Law Society on 27 May 2004 indicating his preparedness to comply with the orders of 30 April 2004 and that he would be making the first payment of the penalty and costs by 31 July 2004, but that despite that letter he had made no payment of any amount of either the penalty or the costs, nor installed the accounting system, and made no attempt before 31 July to bring an application to the Tribunal, although fully aware of his own financial position. He had only brought the application dated 15 September when the Law Society advised him that it intended to appoint a receiver or manager of his practice.

[21] The Tribunal was again sympathetic to Mr Williams. It accepted that he did have an honest intention to pay the instalments when they fell due as at 31 July 2004 and to comply with its other orders, and that his failure to do so was due to a lack of finance. The Tribunal accepted the evidence “given by counsel for the practitioner” that Mr Williams had now set into place means of complying with his financial obligations arising from its orders. The Tribunal’s reasons given on 16 September read:

“The practitioner has given an undertaking that he will pay the sum of \$2,000 as the first instalment of the fine and costs by the end of today and on that undertaking the Tribunal will rely, and the practitioner has also undertaken to keep in weekly contact with the Queensland Law Society about the progress with his ability to comply with the balance of the orders and the Tribunal also relies on that undertaking and, in reliance therefore, makes the following orders: ...”

The Tribunal’s formal orders were then made.

[22] Considered in context, the second undertaking given and accepted was that Mr Williams would keep in weekly contact with the Law Society about his compliance with the orders of the Tribunal; that undertaking excepted from its terms the discrete undertaking to pay \$2,000 that same day to the fund, in part (late) compliance with the April 2004 orders. The orders made on 16 September 2004 amended each of orders 7, 8, and 9 in the terms Mr Williams requested, and further ordered that Mr

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<sup>3</sup> These undertakings are at AR 339 and 341, at pages 3 and 5 of the transcript of proceedings of 16 September 2004

Williams pay the Law Society's costs of and incidental to that application made on 16 September, such costs to be agreed or assessed, and to be paid by 30 November 2004.

### **The April 2005 applications**

- [23] On 27 May 2004 the Law Society and Mr Williams had agreed that the Law Society's costs for the hearing of 30 April 2004 were \$11,000, and on 16 September 2004 the costs for the hearing on 16 September 2004 were agreed at \$2,100. That meant that Mr Williams had to pay to the Law Society \$10,000 (the penalty) plus \$11,000 (the April 2004 agreed costs), and that \$21,000 was to be paid by 12 equal monthly instalments, of which the first was to be paid on 31 October 2004. That required payment of \$1,750 each month. Additionally, Mr Williams had to pay the \$2,100, agreed as the September 2004 costs, by 30 November 2004. The necessary computer program for the trust accounts was installed on 31 October 2004.
- [24] Mr Williams paid the promised \$2,000 on 16 September 2004, and the Law Society next received another \$2,000 on 2 December 2004. The letter forwarding the \$2,000 cheque received on 2 December 2004 was dated 30 November 2004. There was then a receipt of \$2,200 on 4 January 2005, and of a payment by cheque of \$2,200 on 2 February 2005, although the cheque in payment of that amount was dishonoured. After the cheque paid on 2 February 2005 had been dishonoured, a solicitor in the Professional Standards Department of the Law Society telephoned Mr Williams and told him of the dishonouring, and Mr Williams undertook to provide a replacement cheque immediately. That did not happen, and there was no contact between Mr Williams and the Law Society between 10 February 2005 and April 2005, although the same solicitor in the Professional Standards Department had attempted to contact Mr Williams on a number of occasions in the week commencing 11 April 2005.
- [25] Telephone calls made that week were not returned by Mr Williams. No correspondence from Mr Williams had been received since 10 January 2005 when, on 18 April 2005, the Law Society forwarded a letter to Mr Williams informing him that as a result of the dishonour of the cheque he was in default of the orders of the Tribunal and (in its view) was accordingly suspended (as from 2 February 2005) by reason of the orders made on 30 April 2004 as varied. The 10 January 2005 correspondence initiated by Mr Williams had advised the Law Society that he had completed the Practice Management Course. On 18 April 2005 Mr Williams attended at the Law Society and delivered a bank cheque for \$6,600, which brought him up to date, if all sums received were attributed to payment of the amounts ordered on 30 April 2004. He also made an application dated 19 April 2005 to the Tribunal, asking for an order varying order 6 of the orders made on 30 April 2004 which, if successful, would have deleted from that order the words "defaults in the performance of any of the terms of this order or".
- [26] He also applied for an order staying his suspension of practice. On 20 April 2005 he amended that application, to ask also for an order rescinding any order by the Law Society appointing a receiver or manager to his practice and trust account, and that application was heard on 21 April 2005. He swore an affidavit dated 21 April 2005 in which, in paragraph 23, he described almost daily correspondence passing between himself and the Law Society, but admitted that that contact had not extended to the difficulties that he had experienced in paying the balance of the fine

and costs, and he apologised for that. The chair-member's notes of the hearing on 21 April 2005 recorded the submission by senior counsel for Mr Williams that Mr Williams had defaulted in the requirements that he keep in regular contact with the Law Society about his ability to pay the financial penalty and costs, and the further submission that Mr Williams had been in regular contact with the Law Society on other matters, which submission appropriately accorded with the affidavit. Counsel also told the Tribunal that Mr Williams had paid the Law Society that same day in full the balance of the financial penalty and costs, meaning that the total sum owing had been paid ahead of time, since payment by monthly instalments would otherwise have continued until 31 October 2005. Counsel submitted that as Mr Williams had completed the required modules of the Legal Practice Management Course and had installed the computerised Trust Account system as well as having undergone the ordered audits, the orders originally made should be amended by deleting the order numbered 8 – not number 6 – and replacing it with an order that simply required that Mr Williams pay the penalty and costs in full by 21 April 2005.

- [27] That amended application was the one dismissed on 21 April 2005, and the order dismissing that application, and the further order that Mr Williams pay the costs of the application heard on 21 April 2005, are the orders now challenged on appeal, and said to result in a manifestly excessive penalty. That result comes about because Mr Williams is suspended from practice, and his counsel's argument on this appeal was that a 12 month suspension began on 21 April 2005. It was submitted that this result is a penalty now revealed as manifestly excessive, because Mr Williams has paid ahead of time the ordered penalty, and all of the costs he had caused to be incurred. He has done the required courses and improved his practice management as ordered. This has ensured both that the community is protected from some degree of the risk of repetition of his past behaviour, and also that he had paid a significant deterrent penalty. No one else has suffered financially; yet now he faces a 12 month suspension.

#### **The asserted error of law**

- [28] That submission had merit, but it was put in the context of a submission by counsel on this appeal that the Professional Standards Department of the Law Society, and the Tribunal, had both wrongly taken the view that the orders made on 30 April 2004, as amended on 16 September 2004, required that Mr Williams keep in weekly contact with the Law Society regarding the order for payment of a penalty and for costs. That fundamental error by the Tribunal, it was submitted, should lead this Court to exercise afresh the Tribunal's discretion.
- [29] The problem with that submission is that the Tribunal was not in error in its view about its own order and the obligations placed on Mr Williams. As earlier described, the matters about which he was obliged to keep in weekly contact with the Law Society included – as a principal obligation – his obligation to pay the Law Society \$21,000 by 12 equal instalments. There being no error, no occasion arises for that reason for this Court to re-exercise the Tribunal's discretion. Mr Williams has to rely on something other than that asserted misreading of its own order to show that the Tribunal erred in refusing his second application to vary its April 2004 orders.
- [30] The Tribunal's stated reasons included that Mr Williams had given it an undertaking to keep in weekly contact with the Law Society about the progress of his ability to

comply with the balance of the orders, and had failed without a satisfactory explanation to comply with that undertaking, as had been confirmed by his affidavit filed that day. The Tribunal stated that the only explanation offered in the affidavit were work commitments and his practice as a sole practitioner, which the Tribunal considered unconvincing ones. It said that the original self-executing suspension provisions in the April 2004 orders had been made because the matters of misconduct found against Mr Williams had warranted the severe penalty of suspension for practice for 12 months, that it had been mindful of the necessity for a deterrent penalty, but that the suspension in turn had been suspended to take into account the personal circumstances of Mr Williams. He had been given an opportunity then, and in September 2004 was given a further opportunity, and the Tribunal was not prepared to allow him a further indulgence, despite his payment within the last few days of all outstanding sums. He had taken no steps to remedy the default caused by the dishonoured cheque between 10 February 2005 and 18 April 2005. For those reasons the application was dismissed. No error of law is shown in those reasons; they take relevant matters into account, and it was not suggested on this appeal that any relevant matters were overlooked, or irrelevant ones considered.

### **How long is the present period of suspension?**

- [31] The argument as to the manifest severity of the consequence of dismissing the application heard on 21 April 2005 could have been put as an argument that the Tribunal had given inadequate weight to the consideration that simply dismissing the application would have the effect of suspending Mr Williams from practice for 12 months as from that day. The reasons for the Tribunal having given inadequate weight to that consideration would include that the respondent Law Society, in its correspondence with Mr Williams, had contended that the suspension had already come into effect on 2 February 2005, and the Tribunal had earlier expressed the view that Mr Williams had been suspended in the period from 1 August 2004, and presumably until its orders of 16 September 2004. The Law Society's submissions to the Tribunal in April 2005 included the submission that he had been suspended from 1 February 2005. The Tribunal may accordingly have had the view that at least four months of a period of suspension, or periods of suspensions, had already occurred, although its reasons do not refer to either its own earlier view that there had been a suspension from 1 August 2004, or the Law Society's submission that there had been a suspension from 2 February 2005.
- [32] The written submissions advanced on behalf of the Law Society in this appeal contended that because of the delay (two days) in the receipt of the payment due on 30 November 2004, Mr Williams has been suspended from practice since 1 December 2004. On the hearing of this appeal, the Law Society's counsel did not challenge Mr Williams' position that his suspension only came into effect on 21 April 2005. Mr Williams was apparently anxious to protect himself against a possible finding he had carried on practice while suspended. It seems therefore that it is now common ground that Mr Williams should be regarded as first suspended only from 21 April 2005. But that position is at odds with the Tribunal's views on 16 September 2004, and with the terms of its self-executing order.
- [33] I consider the Tribunal did err in failing to specify and thus take into consideration the period for which Mr Williams would be suspended if the applications heard on 21 April 2005, as amended, were dismissed. The Tribunal clearly did not intend

both to cause Mr Williams to be suspended for 12 months and to confirm that he had been already suspended for periods totalling a little over four months, and during which he may have continued to practice. Nowhere in the submissions of the Law Society or the reasons of the Tribunal is there any reference to periods of suspension totalling at least 16 months. Since the self-executing orders had the effect stated by the Tribunal in September 2004, and contended for by the Law Society in the period February to April 2005, namely of achieving earlier suspensions, a further 12 months suspension from 21 April 2005 is both more than the term originally ordered by the Tribunal, and excessive in the circumstances. If Mr Williams can be shown to have continued to practice while suspended, then that is a separate consequence he must face, but that is not a matter for decision on this appeal. As there was no challenge on this appeal to the Tribunal's jurisdiction in April 2005 to vary, as asked, its orders of April 2004, and only because of that absence of challenge, I would be prepared in the circumstances to allow the appeal and exercise pursuant to *Uniform Civil Procedure Rule 766* the powers asserted by the Tribunal, and vary the Tribunal's order made 30 April 2004 by deleting from order number 6 thereof "12 months" and inserting instead "six months on and from 21 April 2005".

- [34] I would make no order as to costs of the appeal, and respectfully agree with the orders proposed by the learned Chief Justice.
- [35] **DOUGLAS J:** I have had the advantage of reading the reasons for judgment of the Chief Justice and Jerrard JA. I agree with those reasons and with the orders proposed by the Chief Justice.