

## FAILURE TO PAY COUNSEL'S FEES

75. With regard to the Counsel's fees listed in paragraph 56, the Tribunal is comfortably satisfied that the Respondent and the Firm failed to pay each amount of Counsel's fees.
76. There are numerous decisions establishing the personal duty of a solicitor to pay fees of a barrister retained by the solicitor on behalf of a client. It has also been established that "wilful or persistent refusal to pay Counsel's fees can amount to professional misconduct on the part of a solicitor" (*Re: Robb* (1996) 134FLR294 at page 310; *Law Society v McCarthy* (2003) NSWADT 58 at para 43; and *Council of the Law Society of NSW v Beazley* [2012] NSWADT 153).
77. In *Law Society of NSW v Davidson* [2007] NSWADT 264, the solicitor delayed for periods of 1 – 4 months the payment of barrister's fees and consultant's fees for a total of 6 different people. The Tribunal found that the delays were: "Not a mere matter of oversight or misapprehension as to the solicitor's obligation to pay those disbursements". It found that the delays were deliberate. It found that he: "Failed to pay third parties within a reasonable time". It held: "... persistent delay in the payment of moneys due to third parties constitutes professional misconduct". It held that the solicitor was guilty of professional misconduct in relation to the delayed payment of each of the 6 persons.
78. In *Council of the Law Society of NSW v Beazley* [2012] NSWADT153, in the particular circumstances of the failure of Mr Beazley to pay barrister's fees, the Tribunal held that his conduct was neither professional misconduct nor unsatisfactory professional misconduct. The solicitor there had not signed the costs agreement for an appeal. He had sent it to the client for signing.
79. Here there were failures to pay 5 amounts of counsel's fees billed to clients all in about August & September 2009. That is a pattern. It is now approaching 5 years since the bills, but the Respondent has paid no part of the barristers' fees. His failure to pay is wilful and persistent.
80. The Tribunal finds that the 5 occasions of failure to pay barrister's fees constituted professional misconduct as it was unsatisfactory professional conduct involving substantial failure to maintain a reasonable standard of competence and diligence.
81. The deposit of these amounts of trust money to the office account in each case also constituted a breach of s. 254(1) of the Act (the requirement to deposit trust money to a trust account). The failure to use the trust money to pay the relevant barristers' fees was in

each case a breach of section 255(1) (the requirement to hold trust money exclusively for the person on whose behalf it is received and to disburse it only in accordance with a direction given by the person).