

An absence of law

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Preface

This book is written by a lawyer, as a simple narrative of facts and events, as they occurred during a period of some ten years.

This story is written, not to purge any feelings of shame or guilt, but to re-write the record so as to tell another story behind that of which the official record speaks, a story which, without some grim determination, would never have had a chance to see the light of day.

Over a period of some eight years I was "rough ended" and eventually thrown out of the legal profession solely because I refused to compromise and give in to the "pack" where issues relating to proper, ethical and professional conduct were concerned

Being a somewhat ordinary and practical sort of lawyer, I had long held the sainted Sir Thomas More in high regard but always thought that as a lawyer — surely he could have worked out some alternative to actually losing his head — until in similar circumstances, when a mere acquiescence would have kept me in my job and status, I found that I could not bring myself to do it, to go to Court to be used as a scapegoat, to whitewash the profession.

Although it was and became a matter of principle I doubt that I would, merely on my own account, have pursued the issues but clients of mine were directly involved and I considered the situation, from their position, to be quite scandalous. An enquiry into my conduct as a lawyer, was soon revealed to be a

scam by which the complainant lawyer had attempted to deflect and delay due enquiry by the Practice Board into his own involvement in a matter.

Interrogated, harassed and bemused, I assumed that similar enquiry would in due course be conducted against the complainant himself. Gradually, I began to realize that the interrogation was only designed to detect as many flaws as possible in my conduct of the law, and that there was absolutely no intention on the part of these inquisitors to call this other lawyer, or anyone who had assisted him in his misconduct to any form of account. The industry "regulators" preferred to ignore the chaos and the pain inflicted by an essentially indolent and greedy legal profession. In accepting that as being "the way it is", they thus maintained position.

It was the ultimate betrayal when those higher up in the legal ranks, with a public duty to provide regulation and control, merely sat back complacently, more interested in maintaining "face" at the cost and expense of individuals adversely affected by incompetence than in achieving fair or just results.

The self-regulators maintain an illusion — the image of a profession, majestic yet at all times the humble servant of its people, fallible yet capable and willing to perform some self-corrective surgery given the chance and opportunity but, in this case they never did, they didn't want to know — more content to crush out "opposition" to their practices than to look inwards and

to see how corrupted and self-serving an institution it had become.

Confronting the Legal Profession, in full defensive projection is rather like standing before the aurora borealis surrounded by the full fury of an arctic blizzard, holding a candle and expecting to be noticed — numb surrender to the snow becomes an increasingly attractive option.

This book may not change anything — but writing it has made me feel better about what happened, not so much as an opportunity to speak, but so that what I have to say might at least be heard.

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CHAPTER ONE

I should have realised long before the trouble began that life in the law was really not for me, but the truth is it was only after some twenty five years of relatively peaceful suburban practice that I became quite unintentionally involved in that dark and murky underworld of legal practice where ambition, money, politics, and power, intermingle with the law; a world in which there are only players and puppets, and nothing is as it seems. Quite by accident, slowly, and deliberately I was drawn into this other world, and as I began to understand its rules and what was expected of me as its captive it released in me a spirit and a determination not to surrender to it, a will to survive that I didn't know was in me.

Perhaps what happened was because I was a woman, though, frankly, I think that had little to do with it; a number of the leading instigators of what became an unrelenting witch-hunt were women. No, I think the bizarre events that unfolded and that turned my life into a maelstrom over almost eight years had far more to do with the pack mentality of a primitive herd upholding an image of strength and power, projecting an air of immaculate and elevated superiority which they assume to be, and often is, accepted at face value by society.

Underneath there is relentless, ruthless world of power play and

politics, along with a constant striving to maintain the external status quo and position in it. Threaten that in any way, question it in any way and the entire group reacts with an almost psychotic rage and violence — united against the "enemy" — determined to bring them down, by any means, and at any cost.

There is an extreme sense in this situation of being somehow "consumed" as if mere punishment is not enough — they seem to want to destroy you, but not with any excessive speed. Slowly, leisurely and with absolutely no emotion they proceed with the operation. Not very nice people at all really and indeed you start to wonder — am I missing something here — is this really happening? Sure these people exist, but what they are doing — is it all in my imagination — am I crazy or what?

Only one thing is certain and that is when the higher ranks of the legal profession in their wisdom decide to turn upon one of their own, they close ranks and unanimously endeavour to assign to that individual all shame and blame — and so the mind games begin.

Funnily enough, I never really wanted to be a lawyer in the first place. I was a product of working-class parents who had aspirations for their children which their children didn't really always share. We took it for granted that we did as we were told and never realised even as teenagers the level of control exacted over us. We never questioned

what our parents, saw as suitable professions for their offspring. Much of this aspirational madness came from parents and relatives who focussed intently on seeing their 'offspring' do well. The constant pressure and drive for something better caused us all some difficulties but no doubt it was all done with the best of intentions.

I was born and raised in Hornsey, a working class district in North London where my father was a health inspector. We left Hornsey when I was seven and by the time I was sixteen I had attended seven different schools. I was even put down for a scholarship to public school but was rejected — apparently this was my fault for having told them I liked to read schoolgirl adventure stories in preference to Dickens, but I doubt it was the sole and only reason.

After various moves around London and England in search of that elusive something that would bring joy and satisfaction I was told one day that we were going to live in Australia and we were on the move again.

So, when I was fifteen, like millions of other British we became ten pound Poms and moved to Australia for a better life. Needless to say, what is not in your heart cannot be found outside it, and my parents became profoundly disappointed in Australia yet, deciding that England was much worse, opted to remain, putting considerable

pressure on us kids to do well and make something good of it all. So at high school, after chatting til lights out instead of studying, as we all did, I used to sneak down to the laundry room and do my reading there and did well enough to study law.

Starting Law School was relatively easy for me. I had become used to being the new girl, to meeting new people and finding a place for myself in some very different social groups. Going into residential college was like drifting back in time, and we wore our gowns to tea. However, we made the best of it, and I made some good friends there.

Not so with Law School however — and I did do my best.

I found that so much of my time at law school was spent on an endless procession of decisions and judgements, among which only those of Lord Denning in any way impressed me with their common sense, clarity and logical application. He alone seemed to manifest a precise understanding of the fundamental issues involved. Yet what seemed curious to me was the fact that the rest of the High Court bench almost always rejected his reasoning. His judgements were often vehemently dissented from and in some cases almost ridiculed. But I liked his judgements and his radical way of thinking which, it seemed to me, paved the way for the future application of new principles of law and equity which would be much more effective in dealing with the

changing patterns of society. Lord Denning seemed to be something of a voice crying in the wilderness: a prophet before his time and I was quite sure that he was often a bit of a worry to the more traditional and staid judges on the bench.

Mainly, I cruised at law school. The work was tedious but not overly demanding. My year (this was the early seventies) was about the first one in which the new immigrants to Australia were coming through into the universities and the law faculty at UWA appeared to be split between the establishment girls who had attended ladies college and whose passion for contract bridge I did not share, and a variety of others who were looked upon with some considerable suspicion by the old guard. I was lucky in one respect that I boarded at college and formed genuine friendships with students from other faculties. I joined a variety of uni clubs but best of all was the undergrad choir — a good, fun group, with some very talented students.

However, when most of my friends finished their degrees and moved off into the wider world to start their careers and earn money, my continued student status and general poverty drove me to spend most of my time longing for the day when I could finish with studying and obtain articles for a clerkship in the law.

At last it came. I graduated. I could have done better, I suppose,

but by then I was pretty much marking time at university, longing for the opportunity to practice real law instead of raking over old judgements. I didn't graduate with any starry-eyed ambitions to be a legal firebrand and change the world. I had done reasonably well in a career path that was really not for me. All I wanted now was to get out and practice at least some of what I had learned and do the best job I could.

But first came the tricky business of obtaining articles. The law then, as now, had a definable hierarchy and I was not in its upper echelons; was not well connected, had not been to a ladies college, had not graduated with first-class honours. All of which meant that getting articulated to a solicitor's practice was no easy matter, my only consolation being that many of my fellow graduating students, were in the same boat. It took me some time to finally get articulated to a semi-retired practitioner in the outer suburbs — a long way from the smart practices in the CBD. However, the small scale of the practice suited me and I found that my articles were easy. I enjoyed the work.

By then I was in my early twenties, driving my first real car which, being a yellow Mazda coupe, attracted speeding tickets like a magnet. I had reasonable sort of social life and joined Toastmasters as I wanted to improve my public speaking abilities and did some backstage work in theatre.

As it was, the two years of articles slipped by uneventfully. During that time I was turning up on one day a week at the legal aid centre to do *pro bono* work. Between that and working on my own at the practice, I handled all kinds of law: mainly commercial, though I did wills and probate and even some criminal law. I found a house to rent in Cottesloe, and sublet rooms. One of my tenants was an artist who turned his room into an artist's studio and painted murals on his walls — we kept chooks and life was easy, a world away from the schedules and deadlines of the legal profession.

After I had finished my articles I went looking for work but though I obtained interviews with some of the big legal firms I found there were a lot of newly qualified lawyers chasing very few jobs. So, as there wasn't much work around, I became a settlement agent and went to work in the real estate industry where at least the money was good. I had my eye on buying a small two-bedroom unit in Joondanna.

After working as a settlement agent for a while I went to work for a guy who had been in my year at University and who had set up his own legal practice. I quickly found myself working in a dilapidated former doctor's surgery, a long way south of the city, and was making about eighty dollars a week, most of which I was spending on petrol. By now I had purchased the unit and I needed to pay the mortgage.

Besides which, people were still constantly wandering into the practice and asking if I was the doctor. Either that or they were crashing in brandishing a shotgun and looking for the ex wife.

The one advantage of the long drive south was that I had a lot of time to think and it occurred to me that, rather than working for someone else, it would be far more rewarding to work for myself. I wasn't only thinking of money, although, it was an important consideration. I believed I would have much more freedom to practice my kind of law – the kind of law that ordinary people found accessible – if I was to set up on my own.

I was lucky and found the ideal premises in Osborne Park. It was a pretty run down weatherboard house with the bathroom and kitchen ripped out. What made it attractive was that it had planning permission to be turned into a business premises, but I never did develop it — to my surprise I found that people actually liked the little house — the only complaint being the vintage of the magazines on the waiting room table.

At about this time I met my partner, who asked me to move in with him. The arrangement suited me very well. It was an easy drive to the office and it meant I could sell my unit and use the money to establish my practice.

So, I went to the bank and asked for a loan — \$6,000. The bank

manager threatened to cut me off at the knees if I went into default. When my first clients walked in we didn't even have chairs to sit on so we got out some packing crates and sat on those — sitting round the table in what had been the living room of my premises with a bunch of farmers while explaining the finer points of law; telling a local resident that he was more likely to get a writ for trespass than compensation if he didn't shift his goats off Crown land to make way for the freeway; and drawing up a variety of documents that ranged from shared garden bores to complex deeds of trust. It was good, easy work and people mostly paid their bills on time. Once a year you roused up some money to pay your tax, went to Rotto for a month in January and came back refreshed and ready to work for another year. By this time I was about twenty-seven and had been out of law school about five years. In some ways I felt detached from the mainstream of the legal profession but was pretty much on good terms with everyone.

Looking back it seems that by some lucky fluke I did have the best of both worlds, and have to admit that unless there was actually an election happening or a major scandal breaking, my interest in government or politics was virtually non-existent — it is fair to say that my life was my practice and my home and dare I say it, I was happy.

I was one of the first women to set up her own legal practice

outside the business district, and was the second female member of the local business association — that was real pioneer territory. I can remember some blokes talking to each other right through a lunch and not one of them stopped or acknowledged me as present — but others could not have been more welcoming. I believe the association now has more women than men as members.

Later, I discovered, I was not so alone. Eight other people, all students in my year at university, had also set up practices on their own, in town or in the suburbs. They, like me, though well qualified, had found it difficult to find work.

It was hard work to get the business established, and over the years I took on and trained up many staff, and articled clerks. At one stage I had a solicitor and an articled clerk so decided to set up a branch office to see how it would go, offered the use of a shop on the other side of the river. This time, though it took a while before people stopped coming into the shop asking to buy pork chops, the venture worked out not too badly. But I closed it down with the birth of my second son.

Once established in my practice it never occurred to me to consider entry into the international law firms with their hundreds of partners and multinational corporate clients. Indeed, I was somewhat

shocked when I found out that some professionals worked to strict six minute time frames. I could never work like that. I was practicing law at the grass roots level, dealing with ordinary battlers like myself who needed someone to take their side.

Slowly the practice grew, but we stayed with the weatherboard house and didn't mind that the dunny was at the end of the garden. One of my clerks was almost killed one day when a hoon in a speeding car spun out in the back laneway. We heard a crash, and a yell and thought he had been killed, but fortunately the car had gone through the other fence.

We never pranked our clerks (well, hardly ever) but one did take her dog down to the Armadale courtrooms once, accidentally locked in the car boot. When we found out and telephoned the Court they wouldn't put the message through because they thought we were having a joke. Happily the dog survived and didn't seem to mind too much.

By the mid eighties my legal practice was well established and I was able to take holidays; first to the "Pearl of the Orient" where we sipped local beer and walked through Buddhist temples: then back to England and seats up front on a London double decker bus and later to Tasmania.

We started a family, working almost up to the day I gave birth to my first son.

After my second son was born I took six months off to bond with my two sons and employed a locum. Then I fixed up a crèche in my offices and employed a nanny to look after the boys. It was a great arrangement as I could keep an eye on them while still working.

We lost money in the crashes of the early 90's which put a bit of a strain on things but we kept going. I moved the office to rented premises and later bought a cheap house — a place to call home. My sons were healthy and happy and my work was enjoyable. Somehow I seemed to have got everything together, and felt like I was a useful member of the community.

Until, that is, sometime in the middle of 1998 when Mick Murphy walked into my offices in search of legal advice. Neither the man himself, nor the advice he sought was in any way extraordinary. There was no way I could have known that he was the harbinger of disaster; that my dealings with the Murphy family was the start of turning my life into a living nightmare.

CHAPTER TWO

Mick Murphy did not look like the kind of person to herald disaster. He was totally unremarkable. Although it turned out later that he was only 39, from his middle aged appearance I assumed him to be about ten years older. Of course, with the troubles he was experiencing both with his family and with his company, it wasn't surprising that he appeared so much older than his years, though I knew none of that when he first walked into my office.

He had come to seek advice about a debt factoring contract he was thinking of entering into with AFM Factors. Mick filled me in on the details. He had a construction company, TRC, which, although it had plenty of work, seemed to be permanently struggling – which was the reason why Mick wished to factor some of its debt. I did a lot of work for AFM at that time — apparently I had impressed its manager by being the only solicitor who had contacted him on behalf of a client for clarification when first advising on their standard contract — and I considered their business practices to be ethical. AFM Factors only accepted AAA rated debts for factoring purposes anyway — mainly big business and government accounts — the question was never could they pay but when exactly would they actually get around to it, and would it come in time to meet the wages bills of the contractors

committed to their projects. Business was fast moving into a world of strict compliance and direct debit — with government as a major provider of work for small business still in the world of 90 day reminders. AFM didn't want issues with its clients about the terms of its agreements — they wanted people to be fully aware of what they were doing — before they signed up — and so I often received work from that source from clients on referral.

Most clients who attended for factoring advice were experienced businessmen, looking for a short term, flexible arrangement to speed up their cash flow. They only wanted to be told where to sign, but I nailed their feet to the ground long enough to give them proper advice and most, in fact, appreciated that. Debt factoring is high cost financing and I advised them to always consider other options before committing any of their debts to the agreement with AFM Factors.

Mick Murphy was no exception. He received my advice, signed the contracts, paid the bill, and was out of the door and back to business.

It was not my practice to be overly dependent upon any one client or client base as a source of practice income — one-off clients walking through my door, seeking legal advice on wills, settlements, leases and probate were my bread and butter, with a small business

and litigation base serving the local community. Most people regard a visit to a solicitor much as they do an appointment with their doctor or a dentist — you don't really want to go but hope that you will come out feeling better. I would laugh when clients told me how relieved they were that the process had not been as painful or as fearful as they had imagined it would be — and even those whose problems could not be resolved so easily often thanked me, not so much for the result but for having been there for them at that time. It felt good when further clients attended on referral and it was always encouraging when they decided to come back with more work for me to do.

Mick Murphy was one of those who did just that. Soon after his attendance, I was sent a few minor debt related matters by TRC and Mick paid my accounts promptly.

Then a few months later he came to my office and said that he was arranging some re-financing for the company for which his father was to be guarantor and the Lender wanted his father to obtain independent legal advice, from a solicitor, before committing to the contract. Mick asked me if I could provide that advice to his father. I said — certainly I could — and that I would make sure that his father knew that TRC appeared to be having a few financial problems. I awaited his response.

I was no stranger to giving advice on loan guarantees — I was giving advice to clients on guarantees several times a week — the banks wanted security and often offered better terms with a guarantee in place. Home loans, motor vehicles for the children and directors guarantees — most were entirely ethical family or otherwise mutual arrangements. Every guarantor is acting against self-interest, when signing a guarantee and yet he or she is your client, even though, usually, it is the borrower who pays the bill. I never had a problem in giving advice on guarantees — if I was not entirely satisfied, I refused to sign the certificate.

On several occasions I had disgruntled borrowers abusing me on the telephone or marching into my office demanding their money back as they considered that they had not got from me what they had paid for. If a borrower wanted to be present they were always welcome — in fact, I sometimes contacted borrowers and banks for further information anyway.

So, when Mick answered 'yes, that is what I want you to do — make sure that he is told', I made my decision to give the necessary advice to his father, and told Mick that he would need to be present and be prepared to answer questions concerning the company business. He agreed and on that basis, later made an appointment for himself and his

father to attend at my office for advice on the guarantee.

Mick introduced me to his father. Frankly, I was a little surprised. In contrast to his younger son, Alf Murphy was a lean, spritely fellow of pensionable age. I felt at ease with both of them. It was explained to me in detail that they required refinancing to pay off an existing company loan secured against Alf's land and to obtain more funds to pay off some outstanding company debts and to provide some working capital. Alf did not look like someone who had a lot of money and the story he told me was quite simple.

Back in 1963 he had been offered a parcel of land by State Housing to help him accommodate his family — eight young children and only a boilermaker's wage coming in.

The land, at first sight anyway, was in a very good, central urban location and had, over the years, appreciated in value. But, apart from the land, Alf Murphy was not a wealthy man. He had only a few thousand dollars in the bank, having given to some of his children substantial financial assistance. He had been a widower for many years.

Mick and Alf had obtained the original loan a year before to set up Mick's established business as a company. Indeed, the business had expanded and now, more capital was needed, to cover the

administrative cost — Mick's brothers had joined TRC, there were around 30 contractors on the payroll and Mick himself spent most of his time away from the office generating work. What the Murphy's were pleased to call their family business was struggling financially and yes, Alf knew all about the debt situation. That was why he had come in, to sign the paperwork in order to introduce more funds into the company. Alf and Mick both had every confidence that with a bit of hard work and some more money, things would sort themselves out and the company would be able to keep on going.

The issues as far as I could see were straightforward and it was not difficult for me to provide Alf with independent advice in the matter. He had to consider whether the company, regardless of the fact that it belonged to his son, and provided employment for other members of his family, was a sound financial proposition. Although the company had an increasing workload and a workforce of about 30, it clearly did not have strong financial controls. From what I could see it was undercapitalised. TRC had reached that classic juncture at which so many businesses fail, for various reasons, to make the transition from small to medium scale.

Generally, it is not lack of product knowledge or expertise, but a lack of sound administrative skills which leads to the demise. Difficulties

which could otherwise be overcome tend to compound in a declining financial situation. Usually, it is not just money but a complete revision of existing policy that is needed, and decisions, once made, need to be enforceable and enforced.

I explained at great length to both Alf and Mick that lending further money to the company was high-risk and that without firm administrative controls money would continue to be leeched out of the company faster than it was coming in. I told Alf that if both he and Mick were still committed to their support of this family enterprise, then I would sign the guarantee but recommended to Alf that he obtain a financial opinion before finalising his position. I also indicated to Alf that a share in his property could be regarded by some as constituting their due inheritance, and that any prior dealings with it, which proved to be adverse to this perceived entitlement, would very likely cause dispute.

How right you can be — and for no particular reason! As a woman I will say that intuition beats logic any time. But how often do we recognise it and act upon it — and indeed, how often do we ignore it — to our eventual cost and detriment. Well — we signed the papers, Mick paid the bill, and they left my office.

I do not know all that went on behind the scenes as regards this family business but less than a year after the re-financing, TRC finally

went under, reeling from multiple blows to its financial stability, difficulties which it seemed to me, with better management, the company could quite easily have avoided.

Firstly, EMI issued a writ for a large amount of money against TRC, which had to be defended because the materials accepted on delivery had been sub-standard. It was this public writ that caused an application by TRC, for further re-financing, to be declined, even though the company had entered its defence. EMI later obtained judgment against TRC because the company could no longer afford to defend its position.

Secondly and worse, certain customers would not pay their accounts. When the company sought payment, photographic evidence revealed poor workmanship on jobs that should have generated much needed capital to the Murphy's family business.

I discovered, upon examining the documents, that there had in fact been a contracts manager — namely Kenneth Murphy. He turned out to be a somewhat bellicose, yet ingratiating, older brother of Mick. He had positioned himself into the company as its contracts manager, responsible for the supply of materials and completion of contracts, an assumed role that I later understood Mick to have had no choice but to accept.

When I contacted Kenneth, in relation to the contractual and workmanship issues, he merely referred me to Mick, as being director of the company. Mick and I each did our best to negotiate the company out of what eventually proved to be insurmountable financial difficulties, without further reference to Kenneth.

But Kenneth often telephoned me, demanding assurance that both Mick and myself were doing everything possible to look after the interests of the company, expressing his profound displeasure as regards the financial position of the company, and professing extreme concern for the health and welfare of his younger brother Mick, given the predicament that he was in. The fact that Kenneth had been contracts manager and primarily responsible to the company for the presenting issues did not seem to enter his mind as he urged me to be doing my best to support Mick and the company during this difficult time.

This contact with Kenneth, I now, with training, recognise as being paranoid projection — a primitive, subtle, and, in certain circumstances, extremely powerful form of psychic defence. Feelings of inadequacy, shame or guilt can easily be disposed of — and self-esteem maintained — simply by projecting out all emotional discomfort onto other people. Paranoia enables a person to maintain a sense of

power, in a situation, by attributing all fault and blame to some other person, group or institution.

In theory, and as clients in therapy, one can afford to look at the emotional vulnerability of the paranoid from a compassionate position but, out there in the workplace, and in the family environment, the paranoid causes much distress, often ruining the lives of those who by chance or circumstance, become enmeshed in his or her circle of influence.

If I misplace my car keys, as I often do, I can say, "how silly of me" and continue with my search — the paranoid will soon be convinced that someone has moved the keys without telling him, that burglars must have stolen them, how ridiculous it is that he has to be somewhere for a certain time anyway, and that if it wasn't for car thieves in the first place, we wouldn't need to have car keys at all — an agitation which disappears absolutely the moment the keys are located, with no real damage done. When, however, this type of projection is used to cover up the mistakes and misconduct of those entrusted to positions of relative power in our community, it is then that the individuals concerned, and society generally, become faced with some considerable problems.

As a result of Kenneth's somewhat forcing paranoid position, I

didn't question him. Instead, I questioned myself. Had I done enough? Was I doing enough? Mick himself became increasingly depressed and, in despair, even considered personal bankruptcy — instead of demanding more accountability and assistance with the company issues, from Kenneth.

It can be easily seen how a paranoid defence works best in a situation where the target retaliates by launching a counter- attack. As the parties squeal and fight, over whether the "allegations" are true or not, nothing productive gets done. The paranoid evades accountability and maintains a safe position. People whose nature is more passive and caring tend to wear this burden of projected guilt. Taking it on board, they try to deal with the accusation, rather than to aggressively reject it. The paranoid simply maintains position — and again, nothing productive gets done. Looking back, I can see how it was, at that stage, that Mick and myself became, for Kenneth, either the saviours or the scapegoats in the situation.

If the company survived, then Kenneth would appear to have given Mick every encouragement and support. If the company went under, Ken would appear to have done his best — but it would be Mick and everybody else whose neglect and failings had led to its demise. In a nut-shell, the paranoid contrives to put himself in a win-win position

and the other is left feeling condemned — and entirely dis-empowered in the situation.

Other members of the Murphy family, including Kenneth came to me for legal advice on a variety of matters at about this time, I discovered that otherwise than in the context of Mick's business, the family regarded him as "hopeless" and combined to wreck his self-esteem. That Mick was undeniably successful in business when the other Murphy brothers were virtually unemployable rankled their image of him — happy enough to attach to Mick's success, but as pleased to see him down.

While the company was going, using the family funds, Kenneth had got used having money in his pocket. It should have come as no surprise to find him deserting the failing company, supported by workers compensation payments, by reason of him falling through a ceiling when quoting on a job. Kenneth then kept his home, and offered no money by way of assistance to his father.

As Kenneth made sure that he got his workers compensation payments on time, Mick was forced to sell his home, which represented a lifetime of hard work, to meet both creditor's demands on TRC and the repayments on the loan which his father had guaranteed. He took on the repayments due on company vehicles and revoked settlement

on a holiday unit that he had considered purchasing. It would have been all too easy to just give in and give up but to his credit and to my profound admiration of his courage, Mick managed to put aside his personal disappointment and despair and he worked hard to keep the money coming in. By selling his home, and conducting his business, as previously, but on a smaller scale, without Kenneth on board, there appeared to be the potential for future success. In this new venture, Mick was assisted by his brother, Paul, who had joined Mick in TRC. Paul had, in fact, proved himself to be quite a competent worker, with Mick's encouragement and support.

Despite the difficulties created by his family, I continued to think well of Mick and was pleased to see that at the end of the footy season he was taking his usual short holiday in Phuket. Whatever else one might like to think about the Murphy family, they were never in the least bit boring.

Part of the Murphy's land was apparently affected by a planning requisition, intended for possible resumption if and when the Mandurah railway connection went through from Perth. Just prior taking his holiday, Mick asked me to make enquiries of State Planning to see if they would act so as to resume, and purchase, all the land so that the company mortgage and another company debt, which Mick himself had

personally guaranteed, could be paid out and discharged.

I spent a few days preparing a submission to the department and then called their planning officer. He listened in silence as I introduced myself and indicated the position — as we got into some more detail, I named the Murphy's as being my client. There was a sort of gasp from the planning officer and he said, "oh no, not the Murphy's — again". This annoyed me a bit, until I heard the story.

'The Murphy's have been in contact with our office before', he said, 'about 3 years ago, looking for us to buy up their land. We considered it, valued it and offered them some money but they said it was not enough, and went away and tried to sell it privately. Later they came back — wanting us to purchase the land again and would not go away. Eventually, we offered them a lesser sum for settlement and whoever was trying to force the issue seemed to get the message.'

I persisted with what was evidently a touchy subject with the department and they eventually said to get a current valuation and they would have a look at it. When I reported this back to Mick he was unusually quiet — and left the office looking somewhat perturbed — he said he would get back to me.

Well, he got back to me sooner, rather than later because, the day after he got back from his holiday, he was notified that EMI had put

TRC into liquidation, looking for its money.

Boxes of company records were delivered promptly to my office, the records were made fully available, and the liquidator had no problem with them, in fact they were pleased to see that Mick had paid all outstanding tax and clearly, had taken from the company only a nominal wage for himself. Mick's main problem was writing up a statement as director of the company, and this I helped him with — in all the time that I assisted the Murphy's with their issues, it was only Kenneth who ever sent to me any form of written communication.

CHAPTER THREE

By the time that I received the instruction from Mick to contact the Ministry about resuming the land, several of the Murphy family members had been into my office for legal advice, on a variety of matters. I began to realise that the family were in fact very defensive of their family position against those whom they perceived to be outsiders, despite that uniquely Irish capacity to scrabble and brawl among themselves. As the different members of the family attended to have their legal issues sorted out, I sensed that I was being tested, as to both my legal capacity and integrity, but never entirely trusted. Yet, no matter what the latest difficulty, I always treated them with respect and did my utmost to resolve the problem. Gradually, I came to understand them. Their demanding, yet frequently withholding attitude when seeking any form of help or assistance was not at all deliberate. They simply didn't trust anyone.

They never asked for help directly — simply stated their "position", which, as the lawyer, the one assumed to know, I was expected to more or less fathom out and resolve for them, without undermining their self-esteem or making too much of a demand upon them. It would have been too easy to relegate the whole lot of them to the "too hard" basket, and to withdraw my further services on one

pretext or another. In fact, Mick did once challenge me, when I had stayed with their issues for longer than most. He supposed that I had to remain as their solicitor until they sacked me. 'Don't you believe it', I said. 'If a solicitor doesn't want to act for a client any more, we can easily sack them — we have our ways and means'. He was genuinely surprised that I was assisting them by choice, and not because I had to.

In fairness to the Murphys, and to their giving of 'instructions' — once the facts were sifted out of the intensity of the moment, the issues involved were generally not as life-threatening as they often, at first thud, appeared to be. While the Murphy family appeared to lurch from one disaster to the next I don't think it bothered them as much as it did those who became inadvertently involved in their misadventures.

It didn't cause me any particular distress that they had made a decision to try and sell the land. Mick was only able to service the mortgage repayments from funds derived from the sale of his house. No other members of the family came forward to offer assistance. As I believed Alf to have willingly supported the increased loan, against the security of his land, it seemed to me that, in all the circumstances, the land would have to be sold eventually, in order to meet this company debt.

Mick told me, in late 1999, that his father had also agreed to pay

an outstanding debt on his behalf when the land was sold. This was a company debt to ASL which Mick as director of the company, had personally guaranteed. I assumed this agreement had been reached because the arrangement would enable Mick to continue to meet the monthly re-payments on the land, in preference to paying out ASL immediately. The total debt, with interest, was around \$90,000. By deferring this payment, the loan could be serviced, and the land sold for fair market value, rather than as a mortgagee "fire" sale, hopefully providing a better return to Alfred, when the land was sold.

With this in mind, I had no problem in asking ASL to postpone repayment of the debt until the land was sold, and in asking them to reduce the debt to principal only, an amount just under \$60,000, such that this re-payment, alone, would not contribute to any reduction of Alfred's aged pension as and when the land was sold. ASL agreed to this in principle. I therefore could see no reason for their lawyers to then attempt to "tighten up" the offer, so as to impose a time frame on compliance. But ASL's lawyers wanted "certainty" for their client, and there was a fair amount of correspondence with them over this issue, some of it quite snippy as the lawyers immediately wanted to create a charge over the land, with a fixed date for re-payment of the negotiated debt. This, I told them was not the agreement offered. Their client could

wait, or if they wished, sue Mick — it was a commercial decision, and their client's choice.

Personally, I consider some solicitors tend, where there are big name clients and relatively large amounts of money involved, to be a bit overzealous, generating difficulties and bad feeling with no practical input or progress towards any form of resolution for their client at all — no more than a lot of "bells and whistles" as they dutifully proceed to create mountains of legal paperwork and resultant chargeable hours.

I have always had a sense, when it comes to working with people who control and command real power, such as in my contact with ASL and the Ministry, that there is little, if any, aggression attached to how they make decisions and use their inherent power. In fact most are, as indeed they can afford to be, quite reasonable and upfront in their dealings. Whereas, those who *pretend to* power seem to be a major cause of stress and aggravation in the world, with sly, deceiving, conniving tactics dressed up as being the tools of the trade of "very powerful people" which, in my experience, is simply not the case. Eventually, the ASL solicitors simply put a caveat on the land so as to prevent any sale of the land until the agreed indebtedness had been repaid. This was based upon my correspondence to them, and it seemed to me to be a proper resolution to the issue.

But, prior to ASL placing the caveat on the land, in April of 2000, I proceeded, in late 1999, on Mick's instructions, to engage the services of a licensed valuer for the purpose of an intended sale of the land, on the basis that there would then be a family meeting, to consider a sale of the land to the Department of Planning.

I duly made contact with a valuer who I knew to have previously worked for the Valuer General's office, and who was now in private practice. This valuer had worked for the Ministry when I represented clients whose land was to be resumed to enable the extension of the northern freeway. I got along with him quite well. We had negotiated extremely reasonable values for the owners upon the forced resumption of their "prime" land, whilst wading around in gum-boots overflowing with water on land that was never wet in winter, and indeed, barely dry in summer.

I advised the valuer of the circumstances of this family, and he spent some considerable time evaluating local sales and prepared his valuation for a nominal fee. I informed Mick and a family meeting at the property, with the valuer, was arranged.

I arrived to find Alfred, Kenneth, Mick and the valuer present. Frankly, Alf's land was one of the most unprepossessing parcels of real estate I have ever seen: on about three and a half derelict acres of

sandy scrubland stood a clapboard house, in great need of repair, along with a rusting clothes hoist surrounded by a few cracked paving stones. It's only saving grace, as far as I could see, was that, if the Perth to Mandurah railway line was ever built, at least part of the land might need to be acquired. But, as there was then no likelihood of the railway going ahead in the foreseeable future, it was obvious that the land, unless sold to the Ministry, would not be easy to sell.

The valuer took a good look around and then, surprisingly, came up with a figure of five hundred and fifty thousand dollars as an approximate value. Alf and his two sons appeared happy with the figure; clearly they considered it top dollar. After we had talked for a while, the valuer said that if the negotiations were going to proceed, then he needed to go to the local council offices to check on a couple of things while Mick said he needed to get back to running his business.

I remained behind with Alf and Ken. They were clearly encouraged by the valuation obtained, and I basically stood back and let them talk to the valuer. I then said that if I was to be instructed as regards the sale of the land, then I would need to obtain formal instructions from Alfred. I offered to meet him later at my office. Kenneth suggested we have the meeting inside the house, although he seemed a bit embarrassed about its general lack of repair. Just as we were walking towards the door Alf

blurted what was on his mind, which was that he didn't really want to sell the land.

I felt something of the usual shock that often accompanied "instructions" from the Murphy's as I had been led to believe that Alf was agreeable to a sale of the land to the Ministry.

I said that, in that case, we should go into the house, and discuss it, but that the valuer should still go and make his enquiries of the council, which he did.

Inside the house, with Kenneth and his father, I said to Alfred that there was the debt on the land, but that he did not have to pay it if he felt that Mick or myself had misled him in any way so as to put the mortgage on his land. I said no one can make you sell the land, if you don't think that it is fair. I told him that it was as simple as that — If he didn't think it was fair that he had to lose his land, he could make a claim against me and it could be dealt with by my insurance, on the basis that he had not been fairly advised or dealt with by me. I told him, and Kenneth that they could get advice from another solicitor if they wanted to.

Alf said no, that was not the problem. He accepted that the family had incurred this debt, and that it had to be re-paid. What he did not want was to have to sell the land too cheap and end up with nothing

left. I said that if the Ministry went ahead and purchased the land, they would have to pay the full market value, as per valuation. That seemed to settle Alfred, who then instructed me, with Kenneth present and making no objection, to proceed to assist him with a sale of the land for no less than valuation. I told Alfred that there would be implications for his pension entitlement upon any sale of the land, which I would look into and provide him with further advice.

The valuer returned from the council offices, and said that it was a possibility that the current zoning could be downgraded in the future, and that, if a sale was intended, it should be proceeded with, without delay.

I returned to my office, forwarded a request to the Ministry to resume the whole of the land for the amount of the valuation, and wrote to Kenneth, advising of that.

The Ministry responded early in the New Year. The response was evasive and so I directed the valuer to investigate. He was informed that the department had no objection in principle to purchasing the land, but that their funding was fully committed until the following October. It was suggested that the family place the land on the market and to try and obtain a private sale.

I informed Mick, who told me that his father had in fact decided to

cycle to Sydney, from Perth over the Christmas holiday, to visit his daughter and that he was expected to be away for about 6 weeks, before flying back to Perth. A contract was brought into my office, by Mick, to purchase the land, obtained by an agent which Thomas had signed so as to sell the land. Apparently, they had tried to auction the land sometime earlier but the sale had not attracted the reserve price. That contract did not proceed.

Eventually, I was contacted by a new agent who said that he was in a position to present an offer on the land, but required an authority from Alfred. I told Mick that if his father was still intending to sell the land then he had better get back to Perth and sign this authority, I received the authority, obtained the offer, and both Alfred and Kenneth attended at my office to discuss it. In the course of that discussion, I mentioned that the residue would be around \$120,000 after the ASL debt and the mortgage was paid.

Kenneth exploded with rage, said that he knew nothing about the ASL debt, that his father had not agreed to pay that, and how dare Mick expect to have his personal debts repaid out of his father's property when it was sold.

I looked at Alfred. He simply looked back at me, then shaking his head, he looked down at the table.

I assumed the worst, that what Kenneth was saying was true, and told them both, that if that was the case, there was nothing I could do. Alfred must go straight away and see another solicitor who could advise ASL solicitors of the situation. Then they could contact me. Needless to say, I was not exactly happy, and yet, something in the situation did not ring quite true.

Kenneth immediately said no, they did not want another solicitor, but he wanted to see Mick immediately and in my office. I went outside to reception, called Mick on the telephone and told him what had happened. He agreed to come over to my office straight away. I told Kenneth that Mick was on his way. Kenneth went off for a walk, to settle himself down, he said, before Mick arrived. I left Alfred alone in my office, and when Mick arrived, asked Alfred if he wished to wait until Kenneth returned before speaking with Mick. He said no, bring him in. So I left them together and Kenneth joined them both upon his return. I waited with my secretary in the reception area for quite a while. We listened at the door, and as we couldn't hear anything, decided to offer them a cup of tea. They didn't want tea. In fact they said I could come in again as they wanted to discuss the offer.

The offer was considered, but it required Alfred to purchase units in another development as part of the deal. Mick was happy to support

his father in this, as he saw that the shortfall of cash required was as a result of his father paying the ASL debt on his behalf. Mick was willing to meet the relatively small mortgage commitment on the units, and his father could live in one, or rent them out or whatever.

Kenneth was hesitant. As a re-investment of Alf's remaining capital it wasn't a bad proposition, but it seemed to me that Kenneth was wanting the money. Eventually, Kenneth said that no way would he agree to any deal that involved Mick where his father's money was concerned. I was told to reject the offer and to tell the agent that they wanted an unconditional cash sale or nothing. I was still concerned about the earlier uproar over the ASL debt, even though it didn't seem to be an issue any more. I suggested that they go away, think about the ASL debt and return the next day to re-consider the offer. I made an appointment with them for the purpose.

On the next day, when I turned up at the office, my secretary said, with some alarm — 'That appointment with the Murphy's — the whole family's coming in. '.

CHAPTER FOUR

The family arrived the following morning at about eleven o'clock. In fact, although five Murphys trooped into my office it was by no means the entire family... merely Alf, and Ken and Mick along with another brother Paul, with whom I'd had some dealings. There was, however, one member new to me, Alf's brother, Jack, who, though about the same age as Alf, had obviously been a little more successful in life. Alf introduced Jack, describing his brother as a 'businessman'. We shook hands.

The Murphy family seated themselves in a row of chairs opposite my desk, and Ken sat to my right. One could have assumed, by looking at them, that they were a line of unruly schoolboys brought before the headmistress, but even then, I sensed deeper motivations in play.

With Jack present, I felt as though the Murphy's had somehow been called into line, that Jack represented authority and that in any decision making process, his opinion would be respected by the family.

I was informed that the previous evening, Ken had been furiously contacting everyone in the family, even e-mailing family members in America, about what he resentfully saw as Mick's attempt to have a personal debt paid out from the sale of the land. Though no one said as much, it was obvious that the uproar created by Kenneth had caused

Jack to become involved in the matter.

Jack led off by saying that the purpose of the meeting was to discuss Alf's land and especially the debt to ASL. They were in my office, Jack said, to find out from me exactly what had happened concerning the land, and to resolve the issues if possible. Evidently, Jack had no prior knowledge of or involvement in the business conducted by the company.

I repeated, for the benefit of Jack and all the family present, the facts in the matter as I understood them to be, and advised them on that basis as to what options were available to Alfred.

As I spoke, they sat in silence, occasionally nodding their heads, evidently considering the situation. When I had finished speaking, they looked at me expectantly. I said that I was not there to make decisions for them — if Alfred still wanted to proceed with a sale of his land, then I could continue to act for him, but that if anyone had any problem with him paying the ASL debt on Mick's behalf at settlement, then Alfred would need to instruct another solicitor to act on his behalf.

Jack spoke on behalf of everyone and said that the Murphy family wanted to pay the mortgage debt and would proceed with a sale of their land. No one voiced any objection.

We then proceeded to the issue of the debt to ASL and Kenneth

again lost his temper, though not as violently as he had the day before. I wondered if his uncle's presence was a restraining factor. Kenneth again objected to any of Mick's personal debts being paid out on a sale of his father's land. I noticed that Alfred appeared to be very uncomfortable. Something about his attitude suggested that he was not used to exerting authority in this family and would have preferred to have been elsewhere. Kenneth seemed to have no issue about the land being sold to pay the company debt, merely a violent objection to any further money from the proceeds being paid out by his father for Mick's personal debts.

I explained that the ASL debt was *company* related, and not merely a *personal* debt of Mick's,. I explained this to the family in more detail. Once they understood that the ASL debt related to the supply of materials to the company, for which, as sole director of the company, Mick had had to provide a personal guarantee, Jack and Paul immediately said they didn't have a problem with this debt being paid out on the sale of the land.

Kenneth then shifted ground. He accused me, rather than the family, of favouring Mick in supporting that the ASL debt be paid out of the proceeds on the sale of the land.

I told him that I was not favouring Mick but that it was for Alfred

to state his position, to say what he wanted to do. Clearly he was unwilling to speak out on the issue.

Kenneth then proceeded to turn on Mick, accusing him of being irresponsible in his management of the company. He seemed quite determined to find some basis on which to turn the meeting into a family squabble. Kenneth appeared to be putting the boot into his younger brother in anticipation of being supported in this position by the family, but things were not turning out quite as he had expected. I considered Kenneth's anger to be quite justified if Mick *hadn't* told his father about the ASL debt before instructing me to negotiate with ASL on his behalf, but, as I told them, whatever the story, there was no damage done to date that could not be sorted out. A decision had to be made.

Kenneth said he wanted to hear from Mick who until now had remained silent. Alfred and Jack both said, yes, let's hear what Mick has to say.

Perhaps for the first time in this family Mick was encouraged and actually allowed to speak up for himself. He had been paying, he announced, for the past year a mortgage of three thousand five hundred dollars a month on his father's land for the past year. He had been forced to sell his own property in order to meet the company debts. No one else in the family had been prepared to chip in and help

so he didn't see how anyone could call him irresponsible.

The room went quiet. I had the impression that this was pretty much the first time that Mick had ever stood up for himself in the family. It was as if they were all shocked, not so much by what he had said but by the fact that he had spoken up at all.

The silence was an opportunity for me to step in and repeat what I had said previously — that the ASL debt was *not* a personal debt of Mick's. It was a *company* debt for which Mick was a guarantor. Whatever the situation had been in the past, Alf now knew there was a proposal on the table that the debt would be paid out on the sale of the land, and a decision had to be made.

I looked at Alfred and then at Jack. They both looked at me directly and both said, at exactly the same time — "The ASL debt is to be paid".

I said in that case, I would continue to act, and that the issues relating to Alf's pension and any concerns about Mick re-paying any money to his father could be postponed until after settlement. The family entirely agreed that it was in Alf's best interests to postpone any "issues" with Mick, which quite frankly, apart from Kenneth's constant niggling, Alfred did not appear to have, until the land was sold.

I turned to Ken and he mumbled something about not having

realised before that it was a company debt, but that if it was a company debt, then he agreed with the family decision that it would be paid out at settlement upon a sale of Alfred's land.

Some discussion then took place concerning the current offer for the land but the instruction I was eventually given by Alfred was clear — the offer was rejected. I was to inform the agent that the family wanted an unconditional cash sale for the full market value of the land as per valuation. The meeting ended on that basis and everyone proceeded to leave my office. Jack and I again shook hands. The family appeared happy to have resolved their issues but I noticed that Kenneth had already walked out of the office. It occurred to me that Ken had always known the ASL debt to be a company debt. His objection to this debt being paid out on sale of the land seemed to be more an issue of personal rivalry against Mick than arising from any other concern. Without Jack's presence at the meeting, it would probably have ended inconclusively, and for Alfred, a complete disaster.

But now, at last, there seemed to be some unity within the family, and for once some clear instructions — albeit mission impossible in practical terms but at least there was some direction.

As the Murphy's were trooping out through reception, Mick suddenly re-appeared in my office to inform me that his uncle had given

him a "right bullocking" the previous evening, and told him to behave himself in future. It seemed that at some level Jack had an insight into the management of this family which Alfred himself was unable to achieve.

Martin, the agent produced another offer on terms similar to the previous one, this time offering units in another development — which offer was rejected outright by the Murphy's.

Martin, was nothing if not professional, and suggested that the family get some equity re- financing in place, as time to obtain an offer for the land was running against them. During this time the family considered all kinds of alternatives to an actual sale of the land. Kenneth, Mick or Paul often attended at my office to discuss their options. I had more contact with Kenneth then than in the previous year and discovered that he basically didn't get on with anyone. It wasn't just his younger brother. He was a recovering alcoholic and the only person I have heard of to have had an assault charge laid against him arising out of a punch-up at an AA meeting. Indeed, he appeared on more than one occasion at my office sporting a blackened eye — apparently some people were less tolerant of his meddlesome ways than his immediate family were constrained to be. Yet, he did seem to have genuine concern for a good result for his father and I did not discourage his

ideas about how to keep and develop their father's land. However, as the family had no money, none of the schemes had the remotest chance of success.

During this time, I did not see how assiduously Ken was manoeuvring himself into what he evidently saw as being a 'Godfather' role in the family, at least where the land was concerned. Though when it came to asserting himself and imposing his will on others, he clearly encountered difficulties, he was most polite and deferential in his dealings with me.

Martin, who was a finance broker as well as a real estate agent, produced the paperwork for the equity financing and Mick came into my office to sign, as without his income, the finance could not be made available to his father. When I contacted Alfred for his signature, he agreed that I would come out to his house at about 7 o'clock the following Thursday night to sign the papers, after which I intended to go shopping.

It was dark when I arrived at the house, though the lights were on inside. I parked my car outside on the road, and walked up to the front door. Alfred let me in.

Immediately I saw Paul was there, in the kitchen. I had barely greeted them when Kenneth suddenly lurched out of the sitting room,

demanding to know what I was doing in his father's house and what were these papers that he had to sign. When I told him, Kenneth became increasingly agitated and said that his father didn't want me as his solicitor any more. I said that I would leave the papers on Alf's desk and he could get himself another solicitor. Alfred said no, that he still wanted me to be his solicitor. Damned if you do, and damned if you don't.

I decided to stay and to try and resolve Ken's issues before Alfred signed the papers. Glumly, I realised there would be no shopping done that evening as every time I answered to Kenneth's barrage of questions he came up with more stuff for me to deal with — repeating himself and re-covering old ground that had been dealt with at the family meeting. Paul tried to mediate but Kenneth didn't seem to want resolution — merely to maintain issues, which, in my opinion had already fully been resolved at the meeting of the family. Finally, I said that either I left the papers with Alfred and walked out or he signed them and I would continue as his solicitor. Alfred wanted to sign the papers.

At about 10.00pm I walked out of the house and got into my car. It was not until I had turned up the heater, put on some loud music and driven about 10 kilometres away from there that I was able to dispel a creepy feeling of having been ensnared, entrapped by something in that

house, something that I felt I had in fact escaped from. I was beginning to understand why Ken was one of those people who, sooner or later, even a saint might want to murder. It was good to get back home.

Later, ASL solicitors wanted a document to be signed by Alfred to recognise the debt. They had already placed a caveat against the land but were again trying to secure their client's position. I explained this to Alfred, who had already been notified of the caveat being placed on the land shortly after the family meeting, and we decided that he might as well sign the document, which still had no fixed date for the repayment and I said I would bring the papers to him for signing.

This time I went in the afternoon. Another brother, Sean, was visiting his father. Sean was a likeable fellow and we talked about various things relating to the sale of the land. Sean said that he knew about the sale but not the details. He appeared to want to know more about it, and so with Alfred present, we discussed it all again and in some detail. He said that he was very happy with the efforts that had been made on his father's behalf. I did not meet Sean again until we were in the process of going to settlement on the land sometime later in the year, but by then, the situation in the family had changed completely.

Not long after my meeting with Sean, I received a letter from

Kenneth. In it, he told me that Mick didn't want to be involved in the sale of the land anymore as it was taking up too much of his time and Kenneth was going to take charge of his fathers affairs. I was agreeable to that but told Kenneth that, if I was going to be taking instructions from him, on behalf of his father, then, together with his father, he had to regard himself as being my client.

Kenneth was happy with that. I sent a letter to Kenneth setting out the current situation and asking for any further instructions. A few days later, Kenneth telephoned me and said he didn't want the responsibility of taking charge of his father's financial matters. He said that he had a few personal problems of his own at that time and didn't want to be in any legal retainer with his father concerning the land. I told him that I completely understood his position and would release him from any and all further obligation.

Meanwhile, Martin, the agent, was still talking with me and expressing his concern at the lack of any offers for the land. After a while I noticed that it was again Mick who was contacting me to find out what was happening regards a sale of the land so Martin and myself were surprised when I suddenly got a letter from Kenneth, requesting details of all the failed attempts to sell the land earlier in the year, as he was writing to the Ministry to ask them to buy the land. Martin and I

didn't give it much of a hope but I gave Kenneth all the documentation anyway. I remained in touch with Alf as we were then dealing with the DSS to address the pension issues that would arise if and when he sold the land, and I was told that a letter had gone off to the Ministry.

So, it was like a bolt from the blue when I opened the mail at the office one day in early September to find a letter from another solicitor. It was a short paragraph, with no attachments to the letter:-

"We act for Alfred Murphy. We are informed that you act for Mick Murphy and may have been acting for our client in which case we would be obliged if you could forward his files to our office forthwith. Also you are requested to contact our office to discuss issues of mutual concern, on an informal basis".

I was surprised, somewhat shocked and deeply puzzled.

CHAPTER FIVE

It occasionally happens in legal practice that clients for one reason or another wish to terminate their retainer before the intended work is complete.

Sometimes they will come in and simply take their files, sometimes a request is made by another solicitor for delivery of the client file to them. In my experience, no solicitor really likes to lose a client — even those of the most troublesome and difficult variety. There is always some element of doubt as to whether or not, if you had done better, the client might have continued with the retainer.

However, there are protocols surrounding the delivery up of a client file, not the least of which is arrangements for the payment of currently outstanding fees. Mick had earlier paid some fairly nominal fees charged to Alfred's account on his behalf., but there was a considerable amount of work that I had done since for which I wanted immediate payment if I was not to be collecting my fee on settlement of the land. I also noted the absence of any signed authority from Alfred attaching to the letter.

I telephoned Alfred straight away about the letter. He said he had not instructed any solicitor to write a letter on his behalf and did not know anything about a letter. I said "oh, come on Alf, no solicitor goes

writing a letter to another solicitor wanting delivery of a client's legal file and he hasn't even seen the client -you must have at least been in to see him at some time." Alfred then said yes, he had been taken in to see this solicitor some weeks before by Kenneth. The purpose of the visit was to make a will. They had stayed about 20 minutes, the will had been prepared and Kenneth paid the bill. Nothing had been mentioned about the sale of the land and he had not instructed this solicitor to obtain delivery of his legal files from me. I said to Alfred well, do you still want me to be your solicitor, or do you want me to hand over your files to this other one? He said that he wanted me to remain as his solicitor.

I then telephoned the solicitor. I asked him about the letter. He responded "I act for Kenneth Murphy", in a tone suggesting that I should be concerned by that, which, indeed, I was.

I said "oh, bloody hell, not Kenneth" and the solicitor was quick to respond that his instructions from Kenneth were given on behalf of Alfred Murphy.

I started off by suggesting to this solicitor that he could well leave the matter alone until after settlement had been completed, but no, he wanted possession of the files. I then suggested that if Kenneth wanted control of his father's files, then they would need to have Alfred sign an

authority for that purpose. I was duly served, at my office, a few days later with their authority from Alfred — half a page of illiterate handwriting on a torn out page from a lined exercise book signed at the end by Alfred — directing me to deliver his files to the nominated solicitor. This document was hand delivered to my office by Kenneth. I was stood in reception at the time talking to some clients. We watched in some amazement as Kenneth scuttled into the office through the main door.

His head buried deep in a fur lined jacket and a baseball cap low down over his eyes, he fumbled around in his pockets, produced a dingy and crumpled envelope which he placed upon the reception counter before my startled secretary could speak, and was back out of the door, and gone. My secretary looked out of the window, and told me later that he must have left by bolting through the landscaped garden towards the back of the building, as she didn't see him leaving by the usual route. With some embarrassment, I returned my attention to the business of my clients.

Then, I returned to my office and opened up the envelope, knowing that, whatever the circumstances of its having been procured, I now had the requested authority for file transfer, upon which I was duty bound, as a solicitor, to act.

This solicitor involved, I already knew to be a difficult one to deal with. One of my former articulated clerks, then working for another firm of solicitors, had been given conduct of a file and he telephoned me one evening, for help. After some discussion, it was, we decided, a totally misconstrued, misconceived and effectively unanswerable writ of summons for a large amount of money, which his client had no option but to defend against so as to prevent a default judgment being entered against him. In another matter, involving this solicitor, which was otherwise referred to me, he had not exposed himself to any risk of negligence, when instructed by a client to act in his defence, against an enforcement application. Instead, and despite having had prior notice of the application, at which, properly, he should have attended, on the client's behalf, this solicitor in fact waited, until after the hearing, before writing to the solicitors for the applicant, saying that although he was the solicitor for this client, the client had not instructed him to appear before the Court, and that he would be very much obliged if they could now inform him of the outcome, for his further consideration.

I recognized him as being a type of solicitor, quite common in a virtually unregulated legal profession, that other solicitors, who are competent and ethical in their practice and professional conduct tend, if possible, to avoid like the plague.

I requested immediate payment of a sum of money for my fees, and offered to provide this solicitor with such background information as he might reasonably require, in order to enable him to take over the immediate conduct of the files. They wanted the files, but Alfred had no money. I stated that Alfred had extended family who could, in that regard, quite easily assist him if they wished.

By way of response, I was advised by this solicitor, that I should hand over the files, await settlement of the land, and then be paid my current fees — subject, of course, to him forming an opinion that I should properly be paid, by Alfred Murphy, any fees at all. In the same correspondence, this solicitor noted that, very likely, I should be entitled to charge to Alfred's account, any extra fees arising out of the prior involvement of Kenneth, in his father's matters.

The series of letters sent to me, by this solicitor, as between early and mid September of the year 2000, were essentially intimidating, offensive and devoid of substance. Nevertheless, if Alfred thought, as represented by this solicitor, that I had done him down in some way, then he was entitled to that opinion and to engage another solicitor to represent him further in the conduct of his legal matters.

Yet, in spite of much protestation that Alfred wished an immediate transfer of his legal files from my office, it was fairly clear to

me, that this solicitor did not wish to take the files in absence of a prior and unconditional acceptance by me of pre-existing fault and blame, nor did he want to accept responsibility for the further conduct of the files, as per Alfred's earlier instructions to me.

I found that receiving and properly answering to the insistent letters of this solicitor was taking up too much professional time in the office, so I decided to utilize my minimal skills on the computer and try to deal with this "correspondence" at home. The family sensed my irritation with it and tended to leave me alone until after I had dealt with this work. Bringing home work from the office was something I rarely did. After completing one response, it needed to be "saved" so I asked my elder son how this should be done. He explained to me what sounded like a very complex procedure and then said that I also needed to give the file a name — exasperated I replied 'oh, I don't know what to call the file — "the bloody fuckwits".

"Hey", said my son, "that sounds good. Call them the "bloody fuckwits" it might make you feel better". It did, and until that earlier computer eventually expired, the file was saved in that name.

After a few weeks of this solicitor's determined cat and mousing, I received a letter from the Ministry indicating that on the basis of

Kenneth's letter, they would, on compassionate grounds, proceed to resume the land, but it was a stringent condition of their further dealing with this family that they be fully represented, at all times, by a solicitor.

I called both the solicitor and Alfred to my office. I read the Riot Act to the other solicitor — he really had no understanding of why he was there and clearly had not taken any instructions from anyone on the history of the matter. He knew nothing about the pension side of things, and did not want to know.

Eventually, he said that I could proceed to do the sale and settlement.

As a precaution, I pre-estimated and agreed with him the precise fee that I could draw at settlement. As he was leaving the room, he turned around and said that if I could get an offer from Mick, before settlement, that he would repay the ASL debt to his father, then he would be happy — just get an offer out of Mick, he said. Anything will do — even \$10 per week.

I told this solicitor to get stuffed — I told him to either take the job and do it himself, or stop trying to compromise me professionally. He sent me a letter the next day, confirming our agreement that I would complete the sale and settlement, subject at all times to his direct supervision, and wondered when he might expect me to obtain from

Mick an offer of settlement in respect of the ASL debt.

The Ministry then made their offer for the land, for the full price of the valuation, and thinking that I might as well involve this other solicitor in the process as not, notified him of the offer.

Days passed with no response from him. I telephoned his office. He had gone on holiday, he might be back next week. I contacted Alfred, he accepted the offer and we started to proceed with the settlement. I decided not to involve the other solicitor anymore and just focus on getting the job done.

Things proceeded with all the high drama and stress which seems to accompany even the most simple conveyances of land but we were getting there. The Ministry agreed to lease-back the land to Alfred for a nominal rent, even though their usual policy was to bulldoze these types of property immediately upon possession, and it was understood that he could basically stay there for as long as he liked.

The DSS was proceeding to an assessment of Alfred 's pension and it was looking promising that he would, even after settlement, be able to maintain his entitlement to the full aged pension. Things were going well, and everything was in order for a Friday settlement when Mick rocked up with a letter addressed to his father from the Ministry — apparently, they had inspected the site some weeks ago and issued the

Murphy's with a clearance notice for the removal of rubbish from the site before settlement.

In fairness to the Murphy's, since getting the letter they had been doing their best to address the issue of around 20 years of assorted rubbish and building material and even a rusted out car body lying around on the site, but nothing in fact had happened. I pleaded with the Ministry to proceed to settlement and let the Murphy's clean up the site afterwards, but the Ministry was firm. They had been caught out like that before, they said — no cleanup, no settlement.

So, I went over to see what would be involved and found Sean standing next to a ute, trying to put a few sheets of corrugated iron onto the tray to take them away. He was surrounded by masses of rusted formwork, flashings, old concrete, planks of wood, timber beams and piles of old bricks — in the far corner I could see the rusted car body sitting on its roof. I said to Sean- "I don't think you are going to get the land cleared before settlement at that rate — in fact I don't think that you ever will — what about the car body?"

"I thought we might bury it" said Sean, "if we could dig a hole to put it in".

I told him not to bother doing any more that day and that I would get back to Mick on it. As I was leaving, Sean came up behind me and

said that he really appreciated all the work that my office had put in to get the land to a settlement. "I suppose", he said "you realise by now that there is madness here". I said "yes, I know that, but I think I can handle it."

I rang Mick and told him he needed a posse of bobcats in there and a fleet of trucks. He said that he would pay for it and between us we got something arranged. I discussed with Alfred what items he wanted to keep and made sure that these were safely stored away in a shed before the bobcats arrived. It was not exactly the park that I had promised the Ministry it would be, but it looked good enough to me when I went out there again for a final inspection.

It was too late for the Friday settlement but we re-booked for Monday, and I spent the entire Friday afternoon trying to calm down the manager for the mortgagee who was threatening to foreclose and enter into possession that very afternoon due to the fact that someone had only just told him about the rubbish while rumour had it that the Ministry was refusing to settle.

Monday afternoon came and the settlement uneventfully took place. It was sad that the Murphy's land had to be sold, but I was pleased that the nightmare was over. In fact, it had not yet begun.

CHAPTER SIX

Usually, when acting for a Vendor on the sale of their property they are ringing up, sitting in your office and waiting for their check long before the outside clerk has even had a chance to return from the settlement. Not so with the Murphy's.

Just prior to the settlement, I had asked Alfred what I should do with his money. He told me that he was going to Albany for a few days and thinking about setting up a new bank account. I was to attend the settlement, as I had been instructed, and he would let me know.

After settlement, I was still awaiting advice from Alfred when I received a telephone call from the other solicitor. Politely, he enquired as to when Alfred Murphy's settlement was expected to occur, as he had recently been on leave.

I told him that he would be pleased to know that settlement had already taken place, as previously instructed by himself and Alfred Murphy, on the Monday of that week.

His immediate response was startling:

'Oh no', he said, 'don't tell me that — I was supposed to have done something about the ASL debt'.

Suddenly, I felt tense. and I heard myself enquire — "what exactly do you mean, what are you saying?". He responded that the

ASL debt was not to have been paid out at settlement. I should have reminded him that with the caveat on the land, a refusal to pay the debt would have meant that there would have been no settlement at all. But instead I just repeated "what exactly do you mean"?

He maintained that I was not supposed to have proceeded to settlement except on his further instructions. That I knew to be untrue, in terms of our September agreement, and disgust overcame my shock.

I said to him 'well, if it is of any comfort to you, lad, I would not have acted on that instruction, even if you had been around to give it". He then terminated the call on the basis that he would most definitely be in further contact with me in relation to the matter.

Following the call, I was in a somewhat foul mood, such that my secretary remarked on how I had previously been quite happy with the settlement. I said to her that clearly the other solicitor had not acted upon some "instructions" that he had been given, presumably by Kenneth, whatever that might mean. From previous experience, I said that I now anticipated more "trouble" from Kenneth on some basis or another, but had no idea what form it would take. "We will", I said "just have to wait and see".

Then, the DSS was calling for me to notify them as to the placement of Alfred's funds on settlement so that his entitlement to the

aged pension could be continued.

I told them that his funds were in my trust account, but they did not consider that to be a placement and a placement had to be made within 14 days of the settlement or Alfred would lose his fortnightly pension.

Now I did consider this other solicitor to be the sort of person that many would dismiss being as completely unreliable, and evasive, but whatever my personal reservations about his mental and professional capacity, he was a lawyer and did purport to be acting on some capacity on behalf of my client. For several weeks prior to settlement he had been sending me urgent letters by fax, stating that he acted on behalf of Alfred, and making some pretty serious allegations against me of prior professional misconduct, suggesting breach of contract or fiduciary duty in relation to the property settlement which I had recently conducted on that client's behalf, demanding that I immediately act so as to do something so as to make amends to the client for whatever it was that I was supposed to have done. It did seem to me to be appropriate that I simply wait until the client made some further contact with me, than for me to try and contact him.

But days passed with no word from either Alfred or from this "solicitor". The DSS required a placement of the settlement proceeds so

I simply put them in an interest bearing term deposit, in the name of Alfred Murphy, with the practice bank, thus maintaining the payment to Alfred of his pension while I continued to await instructions either from or on behalf of Alfred

It was about three weeks after his telephone call to me that I received a further letter from this other solicitor in the matter. He had telephoned me recently, he said, because he had been told by some "third party" that settlement was "imminent", and expressed his extreme concern at my advice to him that settlement had already taken place.

Alfred had actually called me on the Monday morning of the settlement and had been advised that settlement would definitely be taking place that afternoon. He had then specifically asked me whether this other solicitor needed to be at the settlement for it to proceed and when I told him no, he had sounded pleased and happy with that, before advising me that he would be going off to Albany. So, I wondered about the source of this "third party" information.

There followed a barrage of correspondence from this other solicitor, that, when stripped of non-essential verbiage, basically comprised a demand that I pay over to this solicitor all monies received at settlement, including my fee which he accused me of having "stolen" from the client, suggesting that I start making some arrangements, with

Mick or otherwise, so as to forthwith repay to the client all of the moneys lost or paid out at the settlement. When I defended my position, I was told to make a claim against my professional indemnity insurance and also to hand over the files and all monies received by me at settlement.

I suggested to this other solicitor that his repeated demands for payment to him of the settlement proceeds might look better if accompanied by a signed client authority, as would be usual, for the purpose, and told him that, in any event, I was keeping the fees that we had in September agreed that I would be paid, and entitled to deduct at settlement.

Over a period of several days I was sent a variety of "authorizations" and eventually one that was actually signed by the client. I said that I would hand over the proceeds personally, to Alfred, by check payable to his account only, and on the basis that it was not to be paid into the trust account of this particular lawyer.

I was then told that Alfred would be coming in to my office to collect his money, that I had better have it ready, and that I was not under any circumstances allowed to speak to Alfred. The client duly arrived, accompanied by Kenneth who had a look upon his face as if he was the cat that had finally got the cream. I knew that he now

considered himself to be "in charge" of Alfred and his money.

Kenneth stood beside his father at reception making sure that he was given the check. I duly observed the process but elected not to try and talk about the situation with the client at that time. Without incident, they collected the check from my secretary and left the office.

Even though I had made out the check, I did not feel happy about it, and when my bank made a routine security call to make sure that it was my signature on the check, it made me re-consider what I had done and I decided to "bounce" the check and see what happened.

Sure enough, it was the solicitor who complained, demanding that I send to him another check, immediately, as he had already drawn around \$3,500 against the check to meet Alfred's current 'legal fees', and his trust account was in default. He suggested that my check had been in fact dishonored, which was not at all the case.

I requested a further written authority from Alfred and when such was presented to me, professionally I had no further option but to re-issue a check, for the same amount as previously, to the solicitor concerned.

As regards file delivery, I said I wanted an indemnity from Alfred if he expected me, in all the circumstances to deliver his files to this solicitor, as requested, but the solicitor said he didn't understand why I

should make such a request, and so refused to answer to the issue. Professionally, I couldn't properly deal with the files anyway because of the many "allegations" raised. I felt that I was being compromised and given no choice. Lacking any further options, I arranged for my secretary to deliver the files.

When they received the files, and discovered that my payment to Alfred included the amount for the interest received during the period of the delay, I was accused of having appropriated Alfred's money to my own account. With renewed demands for "compensation" to Alfred, couched in terms which I then considered tantamount to an attempt at blackmail, I reported the situation to Law Mutual, the professional liability insurer for the legal profession. Having looked at my report, they immediately contacted the other solicitor and suggested to him that he consider his position most carefully in purporting to act any further on behalf of Alfred Murphy.

The other solicitor was not at all concerned by this — he did not think that there was anything that he needed to consider, but in any case, he had resolved any issues by means of getting Alfred to sign a further form — by which Alfred voluntarily agreed that this other solicitor could continue to act for him, notwithstanding any conflict of interest, arising out of this solicitors involvement with Kenneth and from his

having previously haven taken "instructions" from Kenneth in relation to the matter.

This solicitor then refused to make disclosure to the insurers as regards his conduct or to submit a possible claims notification so as to cover the position of the client in any event.

While all this uproar and mayhem was proceeding, the DSS again contacted me regarding submissions to retain the pension. Without the file, I had to inform them that I could no longer act for Alfred. I then told the other solicitor to get his act together and do the pension side of things, if he wasn't intending to be doing anything more on Alfred's behalf than to continue to bluster and fluster around.

He called me on the telephone. He did not know what to do, he told me, I should tell him what to do. Well, start with the land, I said, as being an exempt asset ----"What's that mean?", he interrupted. Exasperated, I said just give me back the files, butt out and let me get on with the job, or at least send Alfred to a lawyer who knows what he is doing.

The Ministry then sent to me some correspondence concerning the lease back of the land to Alfred. I sent it over to the other solicitor as I no longer had the files. Days later the leasing agent was calling me, saying that if Alfred didn't want to sign the lease then it would simply

lapse. I got onto this lawyer again, told him to stop dithering around and act, if he was ever going to, in the interests, as he saw them to be, of Alfred who he claimed to be his client.

Shortly afterwards I received another letter from this solicitor — thanking me for my help in sorting out the lease. He had used some of Alfred's money which he said he was then holding in his trust account to pay the first installment of the rent, and blamed me again for "losing" Alfred's pension. Demanding that I answer to a tirade of clearly uninformed and essentially vexatious queries about my conduct on behalf of Alfred, he maintained complete control of both the client files and the client's money, and for the client he did nothing at all.

I refused to answer to him because I considered that he was acting on Kenneth's agenda, to contest and to confuse the issues, and that he wasn't getting instructions from Alfred at all.

I told him that if Alfred had any claims against me, then to make them, so that they could be looked at by my insurer, and otherwise to make sure that he was himself insured for the purpose of such intended process. This solicitor then wrote to my insurers, still without making any claim notification on his own behalf, wanting to deal with them directly, and to this gambit, I objected." Put your claims to me", I said, "and I will refer them to the insurer". He then merely repeated a demand

that somehow, as between Mick, myself or my insurers, Alfred had to be repaid all the money lost by reason of the sale and settlement of the land.

During this period I had some contact with Mick who had become increasingly depressed about the situation. Apparently Kenneth had been telling all and sundry and anyone who would listen that Mick had done his father down and that he, Kenneth was doing his best to sort it out. I noted that Mick still managed to take his annual holiday in Phuket, and this resulted in my receiving a scathing letter from this other solicitor that Mick was finding the time to go on holiday but not offering to his father any money by way of settlement. I said to Mick that difficult though the situation was, nothing really could be done unless and until actual claims were made and then my insurers could make a proper assessment.

I was aware even then that an aggrieved person has six years as from the date of an alleged claim to initiate legal process, but I don't think that it was intended that people should actually wait that long, particularly if the matter is already in the hands of their solicitor.

In this case, no claim was made against me during the entire period from early September to the Christmas of 2000. Although numerous and defamatory allegations were very freely made against

me then, and subsequently maintained by the Law Complaints Officer, on "behalf" of Alfred, for a further period of some six years, *no* formal claim or complaint against me, concerning my conduct on behalf of Alfred Murphy with regard to the guarantee or regarding the sale of his land, or the payment of the ASL debt, on behalf of Mick, at settlement, was *ever* in fact proceeded with at all.

CHAPTER SEVEN

I completed funds transfer and file delivery in the early December and it was now approaching Christmas of the year 2000. Apparently, if I was not prepared to initiate some form of claim against myself, then Alfred had no particular interest in instructing his new solicitor in that regard. To be quite honest, professionally I was not all that bothered about them at that time. Having practiced law for many years before their arrival on my door step I did not see this particular family, or this "ring in" solicitor as being particularly oppressive, just something to be sorted out.

When nothing seemed to be moving, Law Mutual suggested that no one take any further action until early January of 2001, and I went off on leave assured at least that no process servers would be leaping out at me from the middle of my Christmas Pudding.

Early January and back at work, I received a letter from Alfred's lawyer, addressed to Mick, care of my office. It was intended that I should contact Mick regards this letter and get him to agree to an all up settlement of the "issues" with his father, and I was invited to contribute to the amount requested, which was somewhat ambiguously stated as being anything between \$60,000 and the full \$550,000 that the land had been worth.

A further letter addressed to me noted with concern that I had caused Alfred to lose his pension and what did I personally intend to do about it.

I refused to assist them in contacting Mick, told them that I did not act for him, and denied responsibility for any loss of pension on the basis that they had taken over the conduct of files before the pension had been lost, that they had intervened and actively prevented me from preparing and making the necessary application.

It would have been easy and cost them nothing to initiate a claim against me with Law Mutual — but regards a claim and or the loss of pension they did nothing whatsoever.

Although it had been available to Alfred to seek separate representation regards any re-payment that he might want and not be able to agree with his younger son after settlement, that he actually had any such intention was never his instruction to me.

All he wanted to do, he said, was to look for some land in the country and retain his pension, meanwhile he was happy to stay on the property as agreed with the Ministry — in fact Alfred had specially come to my office, riding his bicycle, earlier in 2000, just to make sure that I told the Ministry of that intention.

Legally, it was a ridiculous situation that was being created by

Kenneth and this lawyer. If they wished to have the entire transactions in which I had been involved set aside, on grounds that Alfred should never have been got into the further mortgage in 1998, or been induced to pay the ASL debt, then that was the primary issue and it needed to be dealt with first, and fairly promptly.

If those earlier transactions were to be set aside, and myself held liable, then my insurance would have had to pay and my insurers could have sought contribution from Mick.

However, it was improper to be maintaining claims against myself and Mick for the full amount of the "loss" whilst at the same time asking him to make a contribution to the loss on grounds of being a co-guarantor and to repay the ASL debt on the basis that these transactions were not intended to be set aside.

Nothing of course was sorted out, and at the end of January I was informed that Alfred had become disentitled to his pension. He remained living on the property, and as far as I knew, both the files and the settlement proceeds still remained under the control of Kenneth and the other solicitor.

Then, in early February, Mick came into my office in some confusion. He had, he said, been out one evening with friends when this other solicitor had called him on his mobile phone. He had refused to

speak to him then. The solicitor called him back the next day and said that he wanted Mick to come to his office for an urgent meeting. I said that he might as well go along and see what the solicitor had to say.

I made it clear to Mick that I could not act for him as his lawyer, and he said that he didn't want any lawyer — as far as he was concerned, it was something that needed to be sorted out between himself and his father and nothing to do with anyone else. I suggested that he tell me what was said so that I could at least keep a record and Mick agreed to do this.

Mick had told me, just before Christmas, that how this other solicitor had become involved was that Kenneth had been complaining to a family friend about the loss of the father's land. It was recommended by her that he take his father to see this solicitor. Apparently this same family friend had been haranguing Mick on the telephone, ever since settlement, telling him that he was a dead shit, dead loss, the cause of all his father's problems and the reason why the family had had to sell their land, leaving Alfred with no money at all.

This was not exactly the case, as Alfred had been left at settlement with more than enough money to purchase a reasonable home, with development potential in the same area that he had lived in all his life if he had wanted that. In fact Alfred had told me, long before

settlement, that with the sale of the land, he was considering re-marriage and that he had intentions of buying a rural property.

But with Kenneth and the other solicitor in control of his money, and the loss of his pension, Alfred didn't seem now, some four months after the settlement, to be in a position to be doing anything at all.

Mick duly reported to me the outcome of his meeting with the lawyer — apart from telling him that he had stolen \$6,000 from his father (the amount of my fees on the sale and settlement), and caused the loss of the pension, it was merely suggested that he should work something out so as to repay to his father all the money lost by the sale of the land.

Still no claim had been directed to me. I telephoned the other lawyer, He merely repeated that he was instructed to get a settlement out of Mick — and to maintain "claims" against me. I said to him that dealing with this family was like managing a pack of puppies — every time you rounded them up — next minute they were off again, in all directions at once. The other lawyer agreed with me I told him that he was no better with his unfair and inconsistent demands and allegations but he couldn't see it. He merely told me that such were his instructions. It was like trying to communicate with a blank wall, or a misguided missile on auto-pilot. Behind the bluster and fine words evidently

"someone" was in control — but there seemed to me to be absolutely no way of communicating with them on any rational basis at all.

The call ended with me telling the other solicitor to get some proper instructions and stop stuffing me around. From the tone of his gasp as he hung up the phone, I assumed this other lawyer to have been deeply shocked and completely amazed that another solicitor should be speaking to him in such an unprofessional manner.

Evidently, the lawyer was satisfied that he had done his bit towards sorting the matter out because next I heard, he had directed the family to have a private meeting, to which neither I, nor Law Mutual were invited, at which I understood both Kenneth and Jack attended. Mick offered to repay to his father a certain amount, in full and final settlement of all and any further issues — the amount of the ASL debt, at a weekly rate. I was also told by Mick that after the meeting his father had told him that if at any time he could not pay it, then that did not matter to him as long as Mick did his best — to keep the family happy.

I was later advised that having reached the agreement with Mick, Alfred then told the solicitor that he did *not* want him to be involved any further in the conduct of his legal matters.

When I heard how the issues had been resolved, I was not very happy about the situation. Other than in terms of my notes of record

from Mick, there was no written evidence of the agreement reached at all.

In fact, I still felt as if I was under threat from Kenneth, a feeling which increased with the arrival of an envelope from Kenneth — delivered to my office by registered post — it contained a book of deposit slips for Alfred's current bank account, and a letter. The letter said simply that this was the book to be used by Mick to repay to his father the money. It expressed, on behalf of Alfred, profound disappointment that Mick appeared to be so uncaring of his father's interests, Mick was to note that Kenneth was now in charge of his father's money — and that he was already making contact with the other family members, such as Sean, who had been given money by their father over the years so that they could enter into similar repayment arrangements and so make amends to their father. The letter ended by saying that he trusted that Mick would have no difficulty with his repayments — indeed, said Kenneth, Mick would find him to be a better brother if he co-operated than otherwise. Upon reading the letter, I again felt as though entrapped by something that I didn't then understand, from which I wanted to escape, without having the least idea as to how I could go about it.

Nothing had been done towards clearing up the allegations made

against me, and Mick was not happy to be making his weekly payments in lieu of the pension, when properly Alfred should by then have been having the benefit of at least a part pension *and* the agreed weekly repayments, *and* had control of his money.

It is sometimes the case, in legal matters, that parties do not resolve their issues entirely, but agree to disagree and there is a sense of finality about it. The parties may not be completely satisfied or happy, but you have a sense that between them it is the end of the matter, and you can put the file away. Not so in the case of Alfred Murphy.

I was left, at the end of February 2001, with the knowledge that for the next six years, I would have these potential "claims" outstanding against me and that there was nothing that I could do to bring about any final resolution of them whatsoever. It was certainly depressing, not so much that these "claims" existed but that it seemed that the "issues" would never be properly resolved.

So, when in mid June of 2001 I got a letter from the Law Complaints Officer, based on correspondence received from the other solicitor in mid December of the previous year requiring my response to some "very serious allegations", I was not unduly distressed — I saw it as an opportunity to get things cleared up once and for all and a chance to have all of the issues resolved.

I had no problem with answering to the letter from the Law Complaints Officer. I stated that issues had been raised concerning my previous conduct of the file, which I was fully prepared to answer to, but in my response, I also made it clear that in my opinion, some enquiry was indicated as to what had been the role of the other solicitor in the matter and what exactly was and had been the nature of his legal "retainer" with Alfred.

At that time, the Law Complaints Officer entirely agreed with that position and requested of the other solicitor that he forthwith provide full details of his allegations against me, and also provide details as to the precise nature of his alleged retainer with Alfred, and his conduct, on behalf of Alfred of that alleged retainer.

The other solicitor managed that quite easily — he lacked precise and further instructions from his client, to proceed with this complaint — he had only made the complaint upon instructions from the client. Whilst he entirely agreed that full disclosure and enquiry should be made — he lacked the necessary instructions from his client to proceed generally any further in that regard.

However, he was able, he said, to proceed further with one matter of complaint against me at that time — despite being unable to proceed otherwise in the matter of this complaint — I had not rendered

to Alfred, at the time of settlement, a formal account for the legal fees that I had deducted at settlement.

He demanded that the LCO make me pay the money back into my trust account.

Her response was simply that in order to make myself compliant with the rules, I should issue to Alfred a currently dated "bill" for the agreed costs, so that he could, if he wanted to, dispute the amount and have it assessed by the Court.

Now the LCO has a way of conducting "enquiries" relating to complaints which does not always lead to each party knowing exactly what is going on at any given time. My response to the problem of me not having issued the required "bill" at settlement was relatively straight forward — I had done the settlement statements, which clearly showed all amounts deducted, including my fees but I had simply overlooked to make out a bill (in fact, I ascertained that many solicitors did not at that time routinely issue separate accounts when taking agreed fees on settlements, so the entire issue was hardly a hanging matter of itself). I said that I apologised because a bill should properly have been issued, but it was something that I had not, in all the circumstances, attended to or done.

This other solicitor had not been advised of my response when

told by the LCO that I would simply be required to issue a currently dated bill, to be delivered to him, as being the solicitor for Alfred, to remedy the error.

He responded to the LCO that yes, he would be disputing the bill, but that most likely I would be saying that he had agreed at our meeting that I did not need to issue a bill for fees at settlement. He then blustered and remonstrated that he had done no such thing, no way had he agreed with me that I could draw my fees at settlement and act in breach of the rules by not issuing to the client a formal bill of costs.

When advised of this response, I replied that no reference to the issuing of a bill was ever made at the meeting in September but that definitely the fees payable to me upon settlement, were at that time agreed.

I do think that any Law Complaints Officer who had a genuine interest in the resolution of a matter, in the interests of the "client", would at that stage have taken firm and formal management over the conduct of both solicitors involved, and demanded a full and proper response from each of them, and at that time, so as to address the real issues involved, for and on behalf of the affected client.

However, the LCO is merely a public servant, more interested in polishing her nails and reviewing the latest accruals to her

superannuation entitlement, and her stocks and shares, over morning cream cakes and coffee that in any form of regulation of the legal profession. Seeing only a nice and time consuming professional complaint matter in its most early stages of conception, the LCO decided to sit back, like a doctor awaiting further "development" in a pre-cancerous condition — enormously helpful to the next generation of forensic enquiry — not much use to the individuals concerned, and in breach of all moral and ethical codes, if such conduct is intended.

Recent surveys have been conducted as to the role of those of psycho — or sociopathic misalignment in the society we live in. Often, it is found that such un-empathic creatures are good enough to occupy positions where statistics and results are for one reason or another demanded, but that such people do not really have any sense of relationship to or empathy with people, their emotions and their suffering.

Born into a subjective world of compulsive "action" and "reaction" they cannot and have not learned to tolerate anything but "black" or "white", cannot tolerate ambiguity and in fact, always leave this to others to sort it out, lest in making a "decision" their own lack of competence, as a functional human being becomes called into question, or put in doubt. Challenged they become defensive, attacking

and quite paranoid.

In public service they are petty, rigid and smotheringly controlling. The higher ranks both attract and contain their grandiose counterparts — decision makers who *will* act — without compassion, upon orders, regardless of or with scant obedience to the law.

Interested only in exercising and preserving personal power — without personal responsibility they really have no conscious understanding of what it is they do, both to themselves and to others in the process.

Real people and humanity are somewhere else to them — just pieces on the board to be placed, or displaced, removed or replaced — and woe betide anyone who has the misfortune to become entangled in the game.

CHAPTER EIGHT

In the intimate context of the legal profession and its "clients", bound by rules of confidentiality and assumed entitlement to selective action and inaction, the real issues were effectively and efficiently both covered up and silenced — by those very same "parental" figures whose duty and responsibility should have been to impose "the law" and not to maintain the pretence that it simply was not happening.

Instead "the complaint" against me was nurtured, maintained and contained within the system — eventually evolving into something entirely different and completely unrelated to any kind of resolution for or on behalf Alfred Murphy.

In fact, over the years, the original complaint almost completely disappeared. It gradually mutated into a complaint maintained solely by the legal profession against me, concerning issues of misconduct within the profession generally with which they simply did not want to deal.

The complaint became a stalking horse which enabled the Law Complaints Officer to keep me under her scrutiny and her control — someone that she could "manage" while in complete denial that as far as the interests of Alfred were concerned, she was doing nothing whatsoever.

When later this other lawyer attached himself to the "Bar", and

availed himself of its influence, there was nothing that could be done for Alfred — unless the Law Complaints Officer was in fact both able and willing to do her job and fully investigate this lawyers conduct, and that in all the circumstances was clearly something that she was not prepared to do.

Instead, she maintained this "covering" complaint against me, an enforced, continued and somewhat ambiguous "involvement" in matters that I entirely agree, if conducted properly, would have either concerned me fully in terms of a conducted claim or complaint — or else been "none of my business" at all, upon due termination of my retainer.

Because of the total refusal of the Law Complaints Officer to act, I was simply left — accused by innuendo, unable to either discharge the allegations or to have them discontinued.

Originally, I could have, of course done something to alleviate and relieve the situation — pay to Kenneth and this lawyer what they wanted, and then simply get on with my life — under a cloud of presumed guilt and blame.

However, once the regulatory power of the legal profession had been brought into play, it was no longer merely a case of the highway robber demanding of you "your money or your life" — in absence of law there seemed to be little point in making a token gesture of

appeasement to these aggressors by the handing over of any money at all.

Although it would give them what they said they wanted, it would not in fact resolve the issues at all. With commencement of the "complaint" against me, the conduct of this other lawyer was also called into question — a direct outcome of his own complaint and something which I assume he had neither expected nor intended.

Clearly, he wanted a complaint against me investigated, but not one against himself, and over the years, as from when he became a "barrister", the Law Complaints Officer manipulatively supported and assisted him at all times in this endeavor.

Originally, I considered the regulatory authorities to have entitlement to be making such arbitrary use of the power at their disposal — assuming there to be some underlying method in their apparent madness by which, as I came to understand, even the most routine of professional conduct complaints, was generally handled and "dealt" with.

I was told by other lawyers at the time that their experience of having been involved in a "complaint" proceeding was similar to mine — there was a distinct feeling that they considered you to be of no importance as a person, to be toyed and played around with, as it

suited their whim and apparently their somewhat perverse pleasure, regardless of the evidence, regardless of the law.

All letters sent are marked "Private and Confidential" so that the mere disclosure to anyone of the existence of the complaint at all is in itself a technical offence. As such the process is both alienating and meant to be something that you have to deal with on your own — the presumption that there is no smoke without fire is all pervasive, but absolutely no help or assistance was given to either myself or to the clients to locate and stamp out the real root of the fire or to determine at an early stage what was genuine smoke and what was merely screen.

I did not see it then, in early 2001, for the deliberate manipulation that it was, an intentional confusion of the real issues — instigated and maintained by an somewhat devious, and certainly incompetent professional lawyer solely to preserve and to protect his own well being and social position, regardless of the position in which such misconduct placed others — determined to survive regardless of the cost to anyone else involved, and in particular, his own client.

And so it was, that being pressured by the LCO, to be "doing something" and proceeding, when in reality, it was for her to make the line call then and bring the game into order, this solicitor wrote to me, to further his "complaint", demanding, on behalf of Alfred, that I now

"itemize" the bill.

Now a request for itemization of a lump sum bill of costs, is something of a two-edged sword in that if a solicitor is required to fully itemize an account, and it adds up to more than the originally issued, or agreed to "lump sum" bill, then the client is liable to pay any excess when the bill is fully charged and assessed.

In this case, I was surprised to receive the request — this other solicitor had already advised me, prior to our agreement, that very likely I would want to be charging Alfred a "premium" for the extra work that Kenneth's prior "involvement" in the matter had cost, and that his client Alfred was agreeable to that.

In fact, I had done a lot of work for Alfred, regardless of what Kenneth had directly caused. As far as I was concerned, the entire position as regards my agreed fee was that I thought at the time it was reasonable and I wanted to agree to something reasonable, in a situation where I thought that I would not otherwise ever get paid at all.

A second reason for my surprise in receiving the request for an itemization was that another member of the family had advised me that Alfred was currently away in the country — it was unlikely that he would have authorized the requested itemization at the time it was requested.

I told the LCO that this client had been away when the request

was issued, I told the other solicitor that I did not accept his request, but sure enough, a few days later, having been told that Alfred was now back, a renewed "demand" was made — "We have our client's authority to request itemization", it said — "now act upon it!"

So, I was pretty annoyed when I had to spend a lot of time putting together the itemized bill of costs — not in fact expecting that it would ever be paid.

I itemized my bill in some detail because I thought that the LCO would be reviewing it, and so used it also as a way of setting out all that had happened since 1 July 2000 until the date of settlement, for her information and further review. Added up, the bill totaled around \$14,000. Technically, Alfred now had to pay the increased amount of the bill, or proceed with his dispute of it to the Court.

I didn't want to charge any more money to Alfred, I didn't want any further involvement with this other solicitor, and from previous advice and correspondence I was not entirely sure that Alfred really did either.

Having informed Mick as to what had happened, he told me that Alfred had recently gone away again. This time he had left the State completely, intending to be away, I was told, for a year, to visit relatives overseas. Therefore I was somewhat more than surprised to receive,

several days after his departure from the State, by bus, a further request, from this solicitor — his client now required the itemized bill to be assessed by the Court.

I told the LCO that this client had been away when the request was issued, I told the other solicitor that I did not accept the request, but again, having been issued, I had no option but to act upon it.

The LCO did nothing and I had to lodge the bill with the Court, at a cost to me of several hundred dollars, which was the filing fee with the Court.

Well, nothing ever happened easy where the Murphy's were involved.

Upon trying to contact the other solicitor, having lodged the itemized "bill" of costs, I was informed by his office that the solicitor was currently off work with a broken leg. It is probably a fair indication of the level of stress that this fellow was causing to me at that time that my first and only thought about it was — well, it wasn't me that did it. In fact, it turned out that he had done it to himself by means of having had an accident whilst skiing.

As a result, I spoke for the first time directly to his employer. She said that according to the file, there were a number of items on it that they would be challenging and that yes, the matter would be

proceeding. I turned up at the Court to find a young fledgling of a lawyer entrusted with the file.

"He had", he said, "been told by this other lawyer that he intended to be getting instructions from Alfred to sign an affidavit — to say that Alfred denied that he had ever had any retainer with me at all."

The Court was then asked if the matter could be adjourned indefinitely, for this intended purpose. Well this young lawyer soon learned a lesson in the law that day.

As politely as he could, the Master informed him that it was in breach of the conduct rules to make any application at all for assessment when the entire retainer was disputed — if that was his position then he had best get back to his instructing principal as soon as possible and advise him to review his entire position in the matter. I said that I didn't want Arthur making any affidavit, on that basis, given my involvement in the history of the matter. I said that the LCO had the entire matter under investigation anyway so best just to let the matter be adjourned — with me a few hundred dollars out of pocket for my trouble and the other solicitor still on leave. I did in fact raise the issue of Alfred having been away at the assessment hearing — but that was not a problem — the attending lawyer produced a typewritten sheet of paper. It was, sure enough, a power of attorney — Alfred had

nominated Kenneth to be his attorney while he was away — the other lawyer had signed as a witness, the other witness was Alfred's brother Jack.

I made it my business to contact the principal solicitor at this other lawyers firm. I asked her how this situation could have come about, and she said that she would look at the file and write back to me.

What she eventually wrote back to me was a masterpiece of legal triumph — well, if it was true what I said, that her employee had agreed with me that I was to do the work, then that probably constituted a retainer — but then, if that was the case, I had agreed to do the work for \$6,000 so there was really no basis whatsoever for me to be charging to the client over \$14,000 and so, as I clearly had been paid already, I had better stop insisting on this payment of the \$14,000 as it was, in all the circumstances entirely improper of me to be charging this to the client if we had had an earlier agreement. for \$6,000.

I sent a copy of this letter to the LCO, complaining about misconduct and that I still had not received from this lawyer any details of his original complaints — it was now the end of September — nine months since the complaint was first lodged with the LCO.

I also complained to the other solicitors principal — she defended him absolutely on the basis that he was indeed a very

experienced solicitor — probably, she said, he is more experienced than me. I told her that if she had no interest in looking at this lawyers personal conduct, then the least she could do was to have a look at the file.

Apparently, she did because on the next letter of correspondence which I received from that office the name of this solicitor had been removed — scrubbed out with black marker pen in the place where his name usually appeared on the letterhead. The letter simply stated that this solicitor no longer worked for that firm. Further enquiries made by both myself and the LCO revealed that he had taken a room in one of the local barristers chambers — he was reading for the bar.

Funnily enough, upon becoming informed in this regard, the Law Complaints Officer suddenly lost all and any interest in making of this other solicitor any enquiry whatsoever as to what had been his former involvement in the matter.

By what I was assured was a complete co-incidence, the Trust Account Inspector of the Legal Practice Board decided to make October the month in which my trust account would be, for the first time in over 25 years subjected to inspection.

Although this other solicitor was sternly reminded that he had

since July failed not only to produce evidence in support of any complaint but the bill, and he had not disclosed to the LCO the nature of his "retainer" with my client, apparently this was no longer really an issue. The LCO had now considered the matter further and decided that it was probably something better left to sort itself out through the Courts — he did not now have to respond to her at all — not until all and any litigation relating to the matter had later been finalized and resolved.

No audit of the other solicitors trust account took place then, nor has an audit, to my knowledge, ever been conducted of that trust account, since that time.

I now had to pay extra fees to my accountant for the purpose of preparing properly for the October audit, had paid a few hundred dollars for the aborted assessment of the bill in September, and it was now the end of 2001, and coming up to Christmas.

However, I was, it seemed not to be left in peace this time. The audit revealed that I had put a total of four placements of money into term deposits over the years for clients without having obtained a separate written authority from them for the purpose.

I was told to contact each client and obtain the necessary authority.

One was in NSW, having suddenly moved there in the middle of

a family law dispute and who had wanted me, jointly with the husbands solicitors to hold settlement proceeds in an interest bearing account with my bank until property issues between them had finally been resolved, another was in Dubai and had simply wanted settlement monies held until he returned to Australia, and another was a pensioner dealing with a liquidator, where money due to him had still to be retained in trust pending a final resolution.

Each wrote back to me straight away with the required ratification of authority and with no complaint at all about the placement made.

From one I never heard — there was no response at all — that one was Alfred Murphy.

CHAPTER NINE

Christmas of the year 2001, and I took my usual break. When I returned to work and Alfred still had not responded to my letter, I became very annoyed with the situation that I felt we had all been placed in, by the manipulation of this other solicitor and so I wrote to him a letter, addressed to his bar chambers.

I expected him to say that, as a barrister, he was in fact no longer acting for Alfred but he wrote a few lines by hand, at the foot of my letter to him, and faxed it back to me, saying that he still acted for Alfred and would be obliged if I would direct all and any further correspondence, intended for Alfred, to him at his chambers.

I queried his status with the Head of the Chambers but received only an evasive reply. As far as I could read it, this solicitor was not yet a barrister, had no insurance, yet was purporting to be continuing as Alfred's solicitor.

I then wrote to Kenneth, who purported to be the attorney for Alfred, while he was "overseas", expressing my concerns and received a response from this lawyer, now typed out on a letterhead of the chambers, advising me that he acted for both Kenneth and for Alfred and that all further correspondence, to either of them was to be sent directly to him.

So, I wrote to him a further letter, enclosing a Deed of Settlement, intended to bring about a final resolution of all the issues involved, making allowance for Mick to continue with the agreed payments to his father which I understood he had been continuing to make since February of 2001. The intended parties to the Deed included Alfred, Mick, myself and the other solicitor — I did not include Kenneth in the Deed as I considered him to have no standing in the matter anyway, and indeed had considerable doubts concerning the involvement of this other solicitor in the matter at all.

The Deed was delivered about lunchtime by one of my clerks, and about an hour later, I received a response — the Deed of Settlement was rejected by both this solicitor and by both of his clients, Alfred wished to maintain his claims against me — as regards the sale and settlement of the land and regards his loss of pension.

It was now fourteen months since the land had been sold and twelve months since the pension had been discontinued — for a further several months, nothing at all happened regarding this until in late August, Mick arrived at my office to tell me that his father was back from his holiday, he had in fact been back for several weeks and that he wanted to do something about his pension.

Mick and Alfred then came to see me on the basis that Alfred

wanted my advice upon how to get his pension. I told him straight out that while he was maintaining claims against me, that would affect his pension — he had to get proper advice, and I gave him the name of another solicitor experienced in pension matters, on referral from the Law Society. They left my office and I was again hopeful of a resolution.

A week later I had Alfred and his brother Jack in my office so I told them again that I could not do anything with claims against me. They told me that the claims were withdrawn, that they wanted me to do the pension, I told them to make some enquiries and wrote off to the DSS to say I was acting again for Alfred. Jack said that he would help as much as he could but that he was going over east at the end of the week so wouldn't be around.

Well, I then tried to contact Alfred again and couldn't get hold of him. Jack had gone to Sydney and so I called Mick and asked him where his father was. I was then told by Mick that Kenneth had found out about his visits to me and had marched him off to see another solicitor. I was told a name and tracked them down — they had gone, on referral from this solicitor, who had now become a barrister to see some other lawyers, in the city. But I heard nothing from any solicitor, in fact nothing further from anyone at all.

So, as it was now nearly two years since the land had been

settled, I decided to take the initiative for once and applied to the Court to re-list the costs assessment application which I had been required to file, at my expense, the year before.

Now, I had been told at the hearing, of the previous application, in late 2001, that I had used the wrong scale for itemising the bill of costs — if the matter was ever to be re-listed, I would have to use a later scale — so, I re-calculated the bill using the more current scale as directed, and this time the bill added up to around \$23,000 with everything included.

The solicitors still on the Court record was the original firm that this other solicitor had worked for in late 2001, so I wrote to them and they declined to act.

I did however find out more about the leaving of this other solicitor from the firm — apparently this had not been the only file which he had been somewhat confused about, and apparently had spent a lot of time gazing at his computer but charging out the time thus spent as billable hours to the clients. I also ascertained that this firm no longer had the client files.

Kenneth had approached the principal of the firm after the other solicitor had been sacked and told her that she had to continue to work for him. She had refused and forced Kenneth to take away the files. As

she understood it, he was then intending to be marching across to the other solicitor, now in bar chambers, to deliver the files to him.

I advised the Court that the solicitors on record refused to accept service, and did not have the files — but that the lawyer who had the files would not go on record. I was told to serve the client direct.

This time I went out personally to Alfred and served him with the new bill — I also put with the papers a letter, telling him to get legal advice independently of the solicitor who had earlier been involved with the bill. I waited to see what would happen.

Very shortly afterwards I received from these new lawyers a somewhat holding letter — they now acted for Alfred in respect of all his legal matters and would have some instructions from him shortly.

I again wrote to DSS, saying that my retainer with Alfred to do his pension had been terminated prematurely.

When I realised that these new solicitors had only become involved to continue blocking any progress on the file, on behalf of this other solicitor who had now gone to the bar, I became most furious.

"What", I demanded, "is happening about Alfred's pension?". They were instructed in the matter of the pension they said, but indeed, their instructions were to do nothing.

"Then what about the costs?", I said. They agreed that it really

should not be the case that Alfred had to pay me the \$23,000. I was informed that Alfred was quite happy to discontinue the proceedings, that he had brought against me, on the basis that he now wanted to revert to the original agreement — that which the other solicitor denied as ever having been made.

Well, if it really had been Alfred who had made such an error in law, concerning a Court assessment of an agreed bill of costs then I would certainly have let him off, just to get rid of him and it, even at cost of the filing fee.

But, if I let Alfred off in this matter now, I would really be letting Kenneth and this other solicitor off and given their conduct as towards my client to that time, I felt that the entire situation was still in need of some proper enquiry and professional review. I felt that to simply "let them off" would be unfair to both myself and to the clients, Mick and Alfred.

So, I then asked these new solicitors as to what decision had been made regards the long outstanding allegations of claim and complaint against me — and I was advised that Alfred wished to keep all of his claims and options open at that time.

When I reminded them that if the client seriously had these claims then it was in his better interests to bring them on rather than just

sit on them, again I was told that such were their instructions and that really was the end of the matter. As regards the pension — yes, they were instructed, but instructed, apparently, to be doing nothing about it at all.

The first hearing of the renewed application came on in the October of 2002, and the matter was listed for a fully contested hearing in early January of the following year.

As usual, I spent my Christmas holiday with thoughts of this family never entirely out of my mind.

When I came back to the office in January, I found that letters had been sent to the Court, during the holiday, asking for the hearing to be vacated on the basis that I had settled up with Alfred, which was not the case. Then they tried to argue on some basis or another that the application was invalid. In the end, I told them — the matter is going to a hearing, to sort out this business of my retainer with the client, and I proceeded to issue a witness summons against the other solicitor to appear and to give evidence at the hearing.

Believe it or not, two days before a three day hearing involving a sum of \$23,000 which this client had actually requested me to itemize, and to list with the Court for assessment, and which amount was fully documented and substantiated.

Alfred decided that he didn't want lawyers to act for him any more — he wanted to represent himself. He got the lawyers to prepare a notice for him that he could sign so as remove them from the record. They filed and served it for him and on his behalf.

Then, together with Kenneth and Jack, Alfred duly arrived at the Court. One of my clerks had decided to come with me to the Court. Although he had never met him, he advised me that he did not like very much the sound of this Kenneth, but when we got into the room, Kenneth could not have been more ingratiating.

He spent some time introducing his father and uncle and told the Master exactly what their issues were with me and how his father had come to the Court to defend himself in the application. When he had finally run out of things to say, he sat back and looked at the Master expectantly.

He was simply asked, whether or not he was the Respondent and he said no, of course, the Respondent was Alfred, his father.

"In that case", said the Master, "perhaps it would be better if he was to sit at the front of the table and you were to sit at the back."

Kenneth could have legally represented his father, by going on the Court record as being his proper legal guardian and formal representative, but that of course would have involved him in

responsibility and above all, Kenneth did not want to be shouldered with that.

Once it was all explained to Alfred by the Master, we were encouraged to make a settlement and Kenneth for once seemed to have been silenced — I said that I did want my filing fee paid and something for my trouble and the Master entirely agreed. Eventually it was agreed that Alfred should pay me another \$3,400 which settled the fee off at \$10,000 in total and I felt happy with that result. However, I said to the Master that I seriously doubted, in all of the circumstances that I would ever get paid the agreed sum — and that to enforce against Alfred personally did not exactly appeal to me at all. The Master then took the somewhat unusual step of adjourning the matter to a fixed date in March — even though it had been settled. If I got paid the agreed sum before hand, the proposed three day hearing could be vacated, otherwise, it would simply proceed.

Alfred obviously did not feel so happy at our agreed basis for settlement after he had had time to return home and reconsider his position. He in fact wrote to me another note, much as he had previously caused me to receive notes of a handwritten nature concerning his matters. In this case he was suggesting that I might accept payment from him in the sum of \$10 per month until the debt of

\$3,400 would, without interest, be extinguished and repaid. I informed him that subject to receiving from him a complete financial statement, I would be happy to consider his offer.

Needless to say, to that proposal, I received no further response at all. I thereafter sent out to Alfred the full array of my less intimidating debt collecting "stickers" — including a highly colorful crocodile which announces "Sorry to put the bite on you, but we really must be paid ". But all to no avail.

Finally, it was the day before the hearing and I was told to stay back at the office, as Jack was coming in to see me, He arrived just before 5.00pm and I told him that this hearing would proceed as by now I was entirely fed up with their antics. Jack could not understand why I was so annoyed. Alfred paid over \$10,000 from his settlement funds for those solicitors to represent him, Jack told me. And all they have done is to cost him another \$3,400 I told him — what about the pension?

Jack then said that it was really none of his business and that in fact he had only come to pay on Alfred's behalf, a cheque to me for the \$3,400. I received from Jack the cheque and suggested that he get advice on getting it reimbursed to him from the other solicitor. As previously, I shook hands with Jack and we parted on amicable terms.

It was at this point I think that it registered with me that Alfred

and Kenneth must have realised by now that Alfred's extra legal fees, since settlement, were around \$17,000 — for which precisely nothing to his benefit or advantage had in fact been done. As at March of 2003, Alfred had not been in receipt of the pension since January of 2001 — and still no claim had been made against me.

However, at least, the complaint lodged back in December of 2000 was still in force, with the parties expected to return to sort the issues out, once any litigation had been finalized as between the parties. With the family settlement as between Mick and his father in place and the bill of costs issues settled, even though Alfred had not signed any final Deed of Settlement as to the remaining issues, which mainly concerned his pension, it seemed that it would be now be an appropriate time to ask the Law Complaints Officer to re-open her enquiry.

But before I got the chance, I received notice of a fresh complaint relating to the matter, which Alfred himself had attended at the Law Complaints Office to file. He had attended with Jack and his nephew Kenneth according to the record between February and early March of 2003 to make this new complaint which had now been written out and I was provided with a copy.

CHAPTER TEN

Well, I took one look at the new complaint and realized that Alfred had merely signed it. Several pages of allegation and innuendo had been written out by hand on sheets provided by the Law Complaints Office to applicants in person — much of the wording had a distinctly legal flavor but lacked context. Clearly some lawyer had assisted at some time with the content of this complaint, but the complaint itself was merely a venting of outrage and anger concerning my conduct, expressed in a questioning and servile manner — Ms Walton has done *this* — and *this* -- and even *that* -" doesn't *any* of this amount to professional misconduct " the complainant whined, and demanded to be told.

Evidently it had been recommended to Kenneth that he get his father to make a new complaint in person and this was the result — although upon further analysis it was not as ingenuous or naive as its informal and rough appearance might otherwise suggest. It had been first drafted in February and finalized in March — and there was one point upon which the complainant was absolutely clear and adamant — the earlier part of the complaint concerning my gross and extortionate overcharging of this client, in relation to the settlement, had now entirely been resolved and was removed from the complaint — it was entirely

withdrawn. It was *not* to be proceeded with.

Otherwise, it seemed that I was expected to answer to all of the allegations — if only I could work out from the general mess before me, exactly what they were.

I wrote back to the Law Complaints Officer and said that in my opinion the fresh complaint was not genuine but that it had been drafted up on "behalf" of Alfred Murphy simply to create the appearance of continuing issues of "complaint" against me.

Other than in terms of the pension, Alfred had, in early 2001, as directed by the other solicitor, settled his issues with Mick and the family had agreed on a final settlement with him, which effectively ratified my transactions on behalf of Alfred as between 1998 and November 2000. Mick had been making the agreed repayments.

I did realise that most likely Alfred had not been informed or advised regarding the legal effect of the agreements reached in the February of 2001 — that all that Kenneth and this other solicitor had intended was to get some money out of Mick to cover the fact that Alfred was no longer in receipt of his pension.

I told the Law Complaints Officer that what needed to be done on behalf of Alfred at that time was to commence an enquiry into the conduct of this other solicitor and his son Kenneth as regards the

pension and their continuing involvement in Alfred's matters since the September of 2000.

I noted that Alfred Murphy had declared this current complaint to be his first complaint in the matter.

The other solicitor had previously used the fact that he could not get further instructions from his client so as to justify his not proceeding with the earlier complaints, back in 2001.

I raised the issue of whether my former client was ever in fact aware of, let alone approving of the original complaint, issued in the December of 2000 by the other solicitor. It was never sorted out.

It was "unnecessary" to the further progress of the complaints against me.

Like many other issues which I raised in the course of the conduct of this complaint proceeding against me — this issue was ignored, disregarded and shoved aside, much like an unordered and unwanted side dish that has somehow appeared on the restaurant table. Clearly, this complaint against me was the main course — and evidently the Law Complaints Officer didn't want anything else on the table.

In correspondence, I told the Law Complaints Officer something of the general history of both this other solicitor and Kenneth and what I

considered to be meddlesome interference by them concerning my clients matter at, since and leading up to settlement. The Law Complaints Officer was not impressed and accused me of making irrelevant and defamatory statements about this noble solicitor and this wonderful son of Alfred's — their impeccable characters were not to be impeached by me — *I* was the subject of the complaint proceeding and it was made clear that *they* were the complainants — a somewhat protected species it would seem, in certain circumstances, against whom no stone can be thrown, and no criticism entertained.

It was suggested that I might improve my overall position if I agreed to withdraw my comments concerning the conduct of the other solicitor and Kenneth, which I agreed at that time to do — on the assumption that in the further conduct of the entire complaint matter, I would be given a proper and further opportunity to speak.

With this minor interruption quelled, the Law Complaints Officer then proceeded to get on with the business of dealing with the new complaint. She proceeded immediately to merge both that and the original complaint together and came up with a list of about ten different general and nebulous complaints against me that really had no substance. They were in fact nothing more than a series of "holding charges" against me that I was not permitted to answer at that time. The

Law Complaints Officer disposed of the pension issue by declaring that it was a contractual matter as between Alfred and myself. As a professional misconduct issue — she had simply excluded it from her enquiry.

As of mid 2003 the complaints against me were no longer the complaints of the original solicitor, nor indeed of Alfred Murphy — they were the complaints of the Law Complaints Officer, and as I read it, mere "holding charges" with which I was clearly threatened, but given no opportunity to address or even begin to try and deal with.

The complaints were carefully numbered and set out, I could not see any real problem with my answering to any of them — given half a chance. Copies of all correspondence was now being routinely sent out by the Law Complaints Officer to the former solicitor or to Kenneth — it kept them both reliably informed as to progress and effectively stopped any further communication between us. I was directed not be in contact any further with Alfred in the matter. It ensured that the Law Complaints Officer was in full command and control of the situation.

Months passed and the Law Complaints Officer still had not made any enquiry of me as regards what in December of 2000 had been represented as being most urgent and serious matters of complaint.

However, during this period, it was suggested to me that the complaints originally made against me by the other solicitor might just as well be considered as withdrawn because the content of the new complaints served to cover them — did they not? — and did I not agree?

I could not see much point in running two complaints when they properly could be merged, so it seemed to me, at the time, to be a necessary thing to do. I agreed that the original complaint made against me, by this other solicitor, could be discontinued with, on the basis that the original issues were effectively maintained and contained in the ongoing matter of complaint.

Believe it or not, I continued to trust that to be the case, until late 2005, and by then it was of course far too late to resurrect the original complaint and not worth the paperwork to try and argue with the Law Complaints Officer about it.

By some mischance of fate it seemed that with the cessation of the originating complaint, the earlier liability of the other solicitor to at some stage answer to his conduct in the latter half of the year 2000 had also ceased, — it had completely disappeared! He had been taken off the hook and according to the Law Complaints Officer — she had my written letters — it had been in the public interest, and done with my

consent.

I had earlier asked, in late 2003, as to when this solicitor would be required to respond and provide an accounting for his conduct. I was then advised that this was not currently an issue, and not something that was going to be investigated at that time. Indeed, it never was.

So, until I was asked to actually respond to this dangled and dangling newly issued and nebulous complaint of early 2003, there wasn't much I could do. Weeks passed and again we were coming to the end of yet another year.

However, in November of 2003, I suddenly received a formal request from the Law Complaints Officer to answer to the current complaint.

Between the list of general allegations provided by the LCO and the several pages of unmitigated inference and innuendo as submitted by the complainant it was problematic as to know where to start, so I simply told the story, starting with the first visit to my office of Mick in the July of 1998, until September of 2003 as I understood it to have happened, submitting a 28 page letter in response to the complaint. I said that if there was anything not covered in my letter, then I would happy to provide further details on request. I also provided details relating to the conduct of the other solicitor, as I had experienced it. I

expected that this would also be noted for further reference.

I answered to a subsequent letter, in which I was provided with a copy of the Certificate of Independent Legal Advice that I had signed back in November of 1998. Although I had not given, nor been required to give advice to Mick, I had not deleted his name from the pre-printed form which had been given to me to sign and my explanation was required.

I said I had made a mistake, and not attended to deleting Mick's name at the time that I had given to Alfred what I considered to have been the independent legal advice. I had been led to believe that the complaints against me in relation to the signing of the certificate were concerned with professional misconduct as regards my client Alfred Murphy. Concerning the error on the certificate I simply said that as far as I was concerned, it was an issue of negligence, had any resultant damage occurred to anyone — which in fact it hadn't, but that I was more concerned for their opinion as to whether or not it was considered that I had acted unprofessionally in agreeing to advise Alfred at all.

My response to the issue of Mick's name having been left on the certificate was duly noted, but the complaint was otherwise more or less left to stand.

It was now December of the year 2003 and coming up to Christmas. Just before closing the office for the year, I received another letter from the LCO — this time she was wanting me to deliver to her all of the files that I had conducted on behalf of Mick and or his company, so my secretary and myself sorted these out and delivered them off. A letter was returned to me asking for some further details of one of the files, to which I again responded promptly and now it was the end of the year 2003.

It only struck me later that if the Law Complaints Officer had made the other solicitor answer to his conduct and provide her with the files he had previously conducted relating to the matter, in precisely the same way as she forced me to do, and at the same time, that a lot of the later difficulties and issues would simply not have occurred.

But, in the slightly myopic view of the Law Complaints Officer, as this other solicitor had been first off the rank to make his complaint against me — that made me and my conduct the sole target of her investigation. In the continuing conduct of both Kenneth and this other solicitor during the year 2003, the LCO apparently took no interest at all — she appeared to be quite content to just keep on sending to them copies of letters so as to keep them informed and continued to advise them as to the current status of the re-issued complaint against me.

I did not know it then, but what had happened and in hind sight what presumably led to this sudden burst of activity against me, by the Law Complaints Officer in respect of the renewed complaint, in the November and December of 2003, was that Alfred had, at that time, proceeded to file and serve, using yet another firm of solicitors, a District Court Writ against his younger son claiming one half of the mortgage debt — and the then unpaid balance of the ASL loan.

CHAPTER ELEVEN

I had genuinely expected that, following my completion of the requested responses to the complaints of the Law Complaints Officer, in late 2003, that she would in the New Year, finally get off her backside so as to actually ask this other solicitor what his involvement had been since mid 2000 with Alfred, as to his legal matters and his money.

Having now answered, as I thought, most fully to the issued complaint I was actually feeling quite relaxed, to the extent where I thought it reasonably possible that I might actually enjoy that years Christmas Holiday.

I actually went to Bali and it was most enjoyable although somewhat subdued as a result of the bombings of the previous year.

While there I had a most unusual dream in which three black spears, bearing blood-red tails were sent over from Australia to land in the garden of my hotel room. I looked at them in my dream, and wished them go away, and to my surprise they never touched the ground but floated back up into the sky and drifted off into the distance. Nothing much of a dream really, but somehow it stayed with me.

Upon my return to the office in early 2004, there were no letters waiting for me regarding this complaint and nothing seemed to be happening with Alfred's matter, as had been previously the case every

Christmas for the past six years. Although I got on with my usual work, funnily enough, this lack of activity concerning Alfred made me feel uneasy and convinced that something was afoot concerning this complaint matter, about which I was not being told. In fact, this sudden absence of activity was more unsettling to me than any of the earlier and randomly continuous "correspondence".

We once had a situation in the office where a husband kept ringing our office because we were acting for his wife. He rang every minute for all of the morning and into the afternoon. Eventually a Starsky & Hutch team arrived in our office from the Federal Police, took some instructions and went out there to sort it out. After around 30 minutes of silence, he was then back at it again — so they went out again to see him, and the phone stopped its continuous ringing.

Believe it or not, after about 30 minutes, we wanted him back on that phone — we wanted to know where he was and exactly what he was doing — in fact he had by then completely settled down — but we were not to know that — a silence can sometimes feel quite threatening, and not a mere absence of noise.

In early February I thought I might contact Mick to see how things were going but when he didn't return my call, I wondered even more what was going on.

So, I decided to write to both Kenneth and his former lawyers enquiring about Alfred's pension, as it was excluded from the complaint and claims had been made against me in respect of its loss back in January of 2001.

Sometimes people have a "sixth sense" about things that seems to defy rational explanation. Sometimes, I think that you can be so close to something that regardless of external "appearances" you do have a knowledge of it which is more "felt" than understood. Bereft of the excuse that the pension was the subject of complaint, they had nowhere to go. They were evasive and said that they lacked current instructions but were still retained by Alfred regarding the pension. I challenged them that they needed to be making claims against me surely, if it was me who had caused the loss of the pension and what was their problem with that. This caused them to run to the Law Complaints Officer for cover saying that I was making "inappropriate" contact with them and in the midst of this debacle, I received one morning a telephone call from someone on behalf of Mick.

He was concerned, he said, because he had been told that a writ had been served upon Mick by his father around Christmastime and that Mick didn't seem to be able to bring himself to deal with it.

I asked him to find out if Mick had a solicitor and contacted them

straight away to find out what was going on. A writ had been issued, I was told and Alfred was going for a summary judgment against Mick for the full amount of the losses incurred to Alfred upon the sale of the land, but not apparently in relation to the pension.

I had not been joined as a party to the writ. In fact, Law Mutual who had originally been writing to me on an almost constant basis, wanting to know of any "further developments" as they so quaintly put it, had not been writing to me now for several months, assuming I suppose that any claim of substance intended to be made against me would properly have been made long ago.

So, I said that I wanted to see a copy of the application for the summary judgement and the papers were sent to me by Mick's solicitors, who represented him as the Defendant to the action.

I was appalled at what I saw deposed to. Clearly this other solicitor had simply arranged for this process to be issued without the taking any formal instructions at all. I could not believe the number of factual misstatements and that even some of the documentation attached to poor Alfred's affidavit was inconsistent with some of the depositions that he had made in it.

It is a funny thing, but you do assume that such an affidavit is too incompetent to be truly dishonest — the errors are so obvious and so

easy to see — it really has to be just a series of mistakes made by some very busy professionals who have done their best and of course, it can all be so easily explained, if necessary.

And indeed — it would be so easy to be taken in by that — to completely miss the wood for the trees. Caught up in trivial argument as to why Alfred is deposing to facts in his affidavit, some of which are readily disprovable by reference to the content of the documents attached to it, one could easily be led into accepting the affidavit in one's enthusiasm to start to "deal" with its content.

In fact it was the authenticity of the entire document, and the manner in which it had come to be procured, not merely random parts of its content, that needed at that time to be urgently called into question, and the part played by the other solicitor in the maintenance of this current "action" — whose actual involvement in the matter seemed to have been entirely replaced by references to Jack as having been present at certain times and meetings — one meeting, alleged to have taken place at my office — I knew it had never occurred.

So I contacted Alfred's solicitor and asked them to stop, until the Law Complaints Officer could review the situation but as the new solicitor would have it — the issue here was simple — money was stated to be owed — and in the opinion of Alfred's new solicitor, there

was no doubt about that at all, hence his current application for an immediate summary judgment — with which they were instructed to proceed.

The Law Complaints Officer didn't intervene, so I approached the Defendant's solicitor to file an affidavit in the proceedings as to my involvement and understanding of the matter — to oppose not only the application but to call into question the validity of the entire conducted proceeding.

The affidavit was duly filed and the summary judgment application came on for hearing.

Well, of course, Alfred's solicitor should not have really been there at all, given that he was seeking an equitable remedy, for which a summary judgement application should not, in terms of the rules, have been made anyway.

But, surely, in a case so obvious as this one — no point in wasting valuable Court time arguing the "small" stuff — mere "technicalities" — this solicitor representing Alfred puffed and strutted, and indeed might, after a few more hours, have exhausted the Bench into finally agreeing with him in the matter by the sheer eloquence of his delivery and his commanding presence.

But, alas, it was not to be — because Ms Walton had filed this

nuisance of an affidavit, by which she deposed to circumstances in the matter singularly at variance with the story which the affidavit of Alfred purported to tell.

Even though this solicitor had managed, before the hearing, to intimidate the Defendant's solicitor into agreement that my affidavit should be withdrawn, even though it had only just been filed with the Court, for some reason the Court was being difficult. It would not let the parties have my affidavit back. Nor would the Court give back to Alfred's solicitor two further affidavits that he had caused to be filed in a hurry, soon after reading the content of my filed affidavit.

"No", said the Registrar "the documents stay on the Court record — but because of the controversy, Ms Walton's affidavit will be sealed up until further order".

Having already obtained the consent of the Defendant's solicitor to my affidavit being withdrawn, I wouldn't have thought that Alfred's new solicitor really needed to say anything more about it — but as the Court would not give it back, he obviously thought that the Court might be in need of some further direction in case this issue of its being opened and admitted into evidence came up at some later time.

He wanted, he said, some costs, for having been put to the trouble of reading my affidavit at all, and — he said — lowering his

voice and looking earnestly at the Registrar — that as it had been withdrawn by the Court, he must be entitled to his costs — indeed, Ms Walton's affidavit should never have been filed with the Court at all, he said, — a lot of people could get into trouble as a result of that affidavit having been filed.

CHAPTER TWELVE

I was fairly sure as to whom this new solicitor was referring to in his address to the Court (which is recorded in transcript) and certainly the Law Complaints Officer refused point blank to even ask of him the question, but I knew that it was not either myself or the Defendant whose interests he was so concerned to protect.

Even before the application, he had written to the Law Complaints Officer shrieking blue murder that I had committed the most heinous crime of all — that in making my affidavit, I had breached Alfred, my client's confidentiality, and the Defendant had filed it on my behalf. The mere mention of such a crime caused the Law Complaints Officer to recoil in horror and to write to me immediately for an explanation of why I had breached my client's confidentiality, bearing in mind that I had indeed committed a most serious offence.

I said to her two things — firstly that if my affidavit was false then it cannot breach client confidentiality — it is merely a false affidavit, and secondly, that if my affidavit was true, then it directly contradicts that filed on behalf of Alfred — and in order to have protected his own client's position, this solicitor should really have allowed it to be put into evidence and let the Court decide — but by alleging breach of confidentiality, it is implicit that the content of my affidavit must be, as

indeed it was, true — therefore, by making this complaint, it is this solicitor who is further damaging his own client's credibility.

But, they said, you were his solicitor before — no matter what he has said, *you* cannot file an affidavit against *him*. My response to this was pretty strong — if I didn't step up now and state my version of the matter, and left it for years, until after the "trial", where would my credibility be. I was entitled, by reason of the complaints which "Alfred" was maintaining against me to set the record straight, to do it now, at this time in the context of the complaint and also to give notice to the Court of the situation.

In any case, I said, I do not believe Alfred to be responsible for the making and filing of the affidavit anyway -I think that he was forced into making it by Kenneth and the former solicitor, to create the appearance of having an outstanding issue still to be resolved by the Court, and to create a bit more gratuitous confusion before the complaint matters are further investigated. I suggested that they all stop hiding in the skirts of Alfred's "confidentiality" and get down to sorting the issues out.

They were not happy, not happy at all.

A few days later, the Law Complaints Officer sent me a further letter — a re-issuing of her list of "holding complaints" and in solemn

words I was advised that in respect of this latest complaint — that I had breached my client's confidentiality — well — they had added it to the list.

It was interesting that although it was actually the solicitor for Alfred who made this confidentiality complaint, he only did so because he had earlier written to the Law Complaints Officer seeking her advice on what to do and she had told him to make this complaint. After I had responded, the Law Complaints Officer seemed to think for a while that it had actually been made by Kenneth and so sent out to him copies of the correspondence, then she decided that the real complainant in the matter was herself and refused to write to anyone in respect of it any more.

Life went on — nobody had bothered to respond to my earlier enquiry concerning Alfred's pension and I assumed the Court action to be further proceeding as they do.

Then, in June, Mick came into my office. He looked awful, absolutely exhausted and clearly depressed. He wanted, he said, any papers relating to the proceedings that I could give him, he had nothing, could not even remember half the things that had happened since 1998, and he had to file a list of documents urgently with the Court. He showed me a copy of the letter from his solicitor.

I told him that I would think about it and let him know. Early in the next week, I received a fax — a further copy of the letter — I assumed it was from Mick.

So, I wrote to Alfred's solicitor. I said that we have a somewhat unusual case here — I have some documents which may be relevant to the Court proceedings — I don't know whether Alfred wishes to claim privilege or not and file them with the Court — but if he wants to claim them he will have to confirm that he had a legal retainer with me — it is the only basis upon which he can claim against me any entitlement to documents or privilege. I pointed out that when last legally represented, in a Court of law by a lawyer, that lawyer had said that Alfred was going to file an affidavit — that he had never had a legal retainer with me at all or at any time.

This, I told them, was a serious issue that needed to be addressed before the proper entitlement of either party to the documents (in copy form) which I then held, could be decided. Well, they were not happy about that either. Give us the files now, said Alfred's new solicitors — we will look through them and tell you what our client will or won't be claiming privilege for. Let us have them. I said no — first state in writing the ambit and duration of the presumed retainer. Nonsense, they said, we don't have to do that — we want the

documents — you say you were his lawyer so you have to give them to us. I requested that such a position be stated in writing — by them -but as usual, as when anything relating to the earlier retainers which Alfred was supposed to have had with this other solicitor came up — nothing would happen.

They remained stubborn and resistant — wanting the files, yet not prepared to simply say at what times and for what purpose Alfred had been my client.

Well, I suppose that it was lucky for this client that there was nothing really in these papers that Mick had not already seen or knew about. I cannot imagine a situation, except where the Murphy family was involved, where a solicitor would not declare a clients retainer with a solicitor for the purpose of obtaining from that solicitor confidential documents to which they said the client was entitled.

I could see that if I didn't enforce my position, these new solicitors would probably just take advantage of the situation to defer and delay filing Alfred's documents, while blaming me for the delay — and very likely pushing for the Defendant to be filing his list of documents at the same time.

So, I made an application to the Court, explained the situation and said that if Alfred did not declare a retainer with me, then I was

going to act on the last legally advised position to the Court — at the costs hearing of late 2001, and simply give to Mick all of the documents. If I had not been Alfred's solicitor at the relevant times, I must have been acting, as Kenneth had also alleged, on behalf of Mick. There was also an issue created by Kenneth that his father's retainer with me had not in fact started in late 1999, to do the pension, sale and settlement, but only in July of 2000. I wanted them to sort it out but even when brought before the Court — they firmly refused to disclose.

When I made the application, I quite inadvertently discovered that in fact Alfred was not even around — he was visiting relatives they said and possibly overseas. Although they were pushing hard for Mick to make and file his list of documents then — no way could their client comply with the same case management direction that both parties had to file their lists of documents — although until caught by my application, Alfred's solicitors hadn't previously made this situation clear to the Court.

Once I realized that Alfred was again away — that at least made sense of correspondence from his solicitor which I had thought previously to have been simply vexatious and annoying. Our instructions they said are to oppose your application and we are unable at present to get instructions from our client. It was of course clear

evidence that Kenneth was driving the case and had sent Alfred away during the tricky period of documents having to be produced — they hadn't anticipated my application — and clearly they were not happy. However, interference with their intended misconduct of the document discovery, so as to completely disadvantage the Defendant, was *not* my intention when I made my application.

All I asked the Court to do was to make Alfred declare his retainers so that I could then make proper delivery of file documents. All the solicitors for Alfred did was to tell the Court that Alfred was unable to say what his retainers had been and asked the Court to order me to deliver all the papers to them anyway.

I was not entirely surprised when the Master decided that the best thing to do was for me to give to these solicitors all of the documents so that they could have a look at them and decide what they wanted to withhold or otherwise from the Court.

It was like a slap in the face — any other solicitor, without that special something which seems to open doors, would have been ordered to simply to confirm in writing, what the client retainers had been so as to entitle receipt of the papers from me — it was that simple — and that hard to get such an order. I just said to the Master that I had made the application solely for the purpose of getting something

properly sorted out, for once, where Alfred Murphy was concerned and that if the Court was just going to move things on, without due process and give them the papers regardless — it didn't sort anything out and indeed merely added to the general confusion.

I withdrew the application.

Alfred's solicitor then leapt to his feet, demanding his costs of the application, but the Court declined to make an order — the Master said that it was to him quite clear that there were some underlying issues, that he neither wanted to know about or to deal with and so he would simply not be making any order as to costs.

I gave the solicitors for Alfred one last chance to declare what his retainers with me had been, and when they would not, simply delivered the papers to the Defendants solicitor, not that there was anything there of prejudice to either party anyway — it was just a matter of principle.

Well, once I discovered that acting in his absence, Kenneth was quite happy to have lost Alfred's potential right to documents, in preference to disclosing the circumstances of Alfred's earlier legal retainers — I realized, beyond any further or reasonable doubt, that Alfred was merely being used to maintain the appearance of an action in which collateral damage to the parties and the eventual outcome appeared to be of no importance at all.

I was also advised at about this time that people who knew the family were starting to become concerned — it had been in the newspaper that Mick had a defense in the matter, so these people were no longer so sure that Kenneth had the right of it and that Mick was in the wrong. They had assumed that with the other solicitor having become a barrister — and me being the subject of professional complaint that I must have done something wrong. It appeared that no one in fact really thought much of Kenneth and I was told that several people had advised Mick to get Kenneth out of his business as long ago as 1998 simply because he was so abrasive and difficult for people to deal with — but then, as now, I assumed Mick to have had very little choice in the matter.

I was told that Alfred's legal fees were amounting to over \$30,000 already and that Mick had had to borrow \$50,000 to cover his. I wondered how much of Alfred's settlement money was still in his account and knew that whatever the outcome of these current proceedings — Mick had no money to repay to his father and neither could afford the legal fees being incurred.

The Law Complaints Officer continued to duly note down the most recent "developments" in the matter, failed to understand what it was that I was saying concerning any of the issues at all and sent me

yet another copy of the re-issued complaint, this time saying that it had been referred back again to the "Committee" and letting me know that they had again affirmed its content.

A holding position on holding complaints — but she never stopped sending something out to me — even when really there was nothing needing to be sent.

Next, I was told that I was going to be summonsed before the Committee to give evidence on oath as to my conduct in the matter. I really was very busy at that time.

I wrote and asked if I could come in soon and have a definite time for the hearing of my evidence. They said that they could not give me a time, or even tell me when the hearing would take place — definitely, they said there would be a hearing and that they would let me know. Needless to say, it was just their way of keeping in touch and they never called me in to give any evidence to them at all.

So, by now I was actually quite fed up with the entire legal profession. I could hardly do any work in the office because there was always something, by way of a letter, usually faxed on Friday afternoon, and always just before any public holiday, from them, demanding of my attention and unsettling of my weekends. I looked around and started a course in counselling to see if I liked it, with a view to changing my

profession. It wasn't only this matter that was beginning to wear me down — just about every case I conducted that involved any litigation, seemed to have "difficulties" engineered by solicitors bent on winning for their clients by any means around — the work was tedious, oppressive and certainly not much fun.

It seemed to me that standards of professional conduct had not improved over the previous ten years or so, and indeed, some of the younger solicitors looked and indeed acted, as though they would be far more at home in a 24/7 gym doing thump boxing than appearing suited in a Courtroom, seeking adjournments on behalf of clients who could not be found for instructions, or wanting orders on applications, served the night before.

I wrote to the Law Complaints Officer with my concerns and was basically told not to interfere in the current Court proceeding any more and it was suggested that I might like to get myself some legal representation

. Whatever, it was clear that no-one was going to intervene before Alfred and Mick were forced to either settle or go to trial and I would have preferred to simply have been left out of it completely.

I searched the law of contract and of tort in an attempt to try and define precisely the wrong that it seemed to me they were doing — but

their conduct always seemed to fall somewhere betwixt and between any defined offence — until I read up on the tort of "false imprisonment" in which a person does not actually have to be locked up, but their freedom has, by improper use of authority or process, been quite drastically curtailed. That is how I felt and thought that this also applied to each of my former clients. It led me to investigate the Vexatious Proceedings Act in relation to the matter, and I read the case law with interest.

An action brought and maintained without the fully informed consent of the Plaintiff could be restricted by the Court on the ground that it was maintained "vexatiously" and, with leave of the Court any interested person could make an application.

Well, clearly the Law Complaints Officer was not such a person and so I decided to proceed with an application.

Originally, I prepared the application as a chamber summons, because of what I considered to be the somewhat "sensitive" nature of my allegations and forwarded it to the Court together with a letter of explanation. The Registrar wrote back and said no, it could be listed and dealt with in open Court. The Registrar and I both knew that my proposed application had been prepared as a chamber summons.

We both knew that an application under the Vexatious

Proceedings Act had to be made by Originating Motion. The Registrar resolved the issue, by sending a note to the listing clerk — saying that my application was not in "proper" form but that he was to list it nevertheless. So the matter became listed and came on before a Judge.

Both Alfred and Kenneth were walking around near the Courtroom and the seats at the back were full. So, the only seat available for Alfred when he at last came into the room was one right next to me, into which he relaxed most comfortably.

I was beginning to find these Murphy's quite inexplicably annoying — particularly when Kenneth came in, and made his father get up and wait until more seating was available.

The Judge made a few pre-emptive comments and observations regarding the matter, noting that my application was listed under the same action number as the actual proceedings — I thought that was wrong, as it was in fact a separate action, but assumed that it had been done so as to keep all of the relevant file together. That I had given "evidence" for the Defendant in the action was noted and bias on my part was suggested. I said that no, that was not the case at all. Before having my affidavit filed with the Court, by the Defendant, I had notified both Plaintiff and Defendant of that proposed intention and it was the

Defendant's solicitor who elected to make use of my evidence. My evidence I said, is merely that — not for one party or the other — just to say what happened.

In that case, said the judge, you had best file your supporting affidavits and a complete chronology of relevant events — it may not be me who finally gets to hear your application.

So, I proceeded to file the chronology and then said to Alfred's new solicitors that really they should not be representing Alfred in what was a separate and independent action intended to ascertain whether or not their retainer to be acting for Alfred was genuine or not. They pretended that it was in fact the same action, such that they were entitled to act for Alfred. I said that even if they were entitled to act and were already on record, they still had to file a document — an address for service, in the new proceeding, before I was obliged to serve them. As usual — they wanted the chronology but wouldn't file the necessary documentation,

For them to do so would have been a recognition that they were now appearing on behalf of Alfred in a new and separate action — and by law would need a new and separate retainer with him. No, they said, they did not need any new retainer — in fact it was their duty to continue to represent Alfred because my application was threatening

his court action, so it was merely part and parcel of representing Alfred that they continue to defend against my application.

Well, I made an application to have them removed, but the Judge said that she had not had time to read the papers and so adjourned the issue to the final hearing, I renewed my application to be heard before a Judge and the next Judge said that in making her "decision", the previous Judge had in fact already "heard" it, and so was annoyed enough with me to order that I pay the costs of the other side on an indemnity basis.

This meant that I would be liable to pay all of the instruction fees, telephone call fees etc in addition to the usual general amount for the appearance of the other side in Court. Such an account would have had to reveal the basis of the client retainer and be fairly detailed as to how the retainer had been in fact conducted.

At the time the attending solicitor positively gushed all over the Judge — thanking her profusely and saying that he had never been granted an indemnity costs order before. Needless to say — he never enforced it against me once the downside of seeking full reimbursement for all that they were then doing for Alfred slowly seeped into his brain — even though I did offer to pay such an indemnity bill in full, should they ever provide one to me. Having lost these two applications, I then

proceeded, under protest to serve them with the chronology, followed by four affidavits detailing the history of the matter, fully supported by copies of all relevant documentation.

They chose to rebuff the affidavits entirely and wrote out Grounds of Objection to each and every one of the paragraphs — irrelevant, hearsay, and bald assertion — not one paragraph was in their opinion sustainable. They got Alfred to depose to an affidavit in which he said quite clearly that his solicitors were not and had not been misleading him in any way — he wanted to be taking this action against his younger son and that they acted upon his instructions — except sometimes when Kenneth had "instructed" them for and on his behalf.

To me, that affidavit was the essence of undue influence — created by the very people who were exercising it against him. The Law Complaints Officer did not agree — Alfred has signed an affidavit she said — saying he consents to the action, and that as far as she was concerned was finally and conclusively the absolute end of the matter.

She didn't even think it strange that Alfred had made such a basic mistake, when sending to Mick a demand, before the writ was even issued, as to give the solicitors the address of his brother Jack instead of Mick's address.

Although it looked as though the writ had been issued upon

Mick's refusal to answer the demand — perhaps he never got it — and would have been served with the writ without warning. But by the time a matter had proceeded to the stage of nearing trial — who cares exactly how the writ came to be issued — except an astute Law Complaints Officer whose job it is to take notice of these things, and she refused to see it as yet another indication that something was amiss.

But I pressed on with the application, and found that just as soon as the new solicitors had got from me the documentation they wanted, and filed their responses — suddenly, they kicked up a shindig, they kicked up a stink — my entire application was invalid they said. It had to be struck out. It had been commenced in chambers, and it should have been by originating motion. I asked the Court what to do, but they didn't give legal advice — I asked a barrister and he said to be safe — I had better start again. Well, I was just a little miffed at that, and so did all of the affidavits again, put them with a proper application and filed it with the Court. I didn't want to "start again" and so requested that it be listed alongside the other application so that they could both be heard at once. Knowing already that my other application was doomed to be struck out, at least no time was wasted — both were listed for hearing on 15 December 2004.

I had a process server go out and serve Alfred direct with this

new application. It put Kenneth into the foulest of moods. He complained bitterly to the Law Complaints Officer — for some unknown reason they decided to send to me a copy of his emails — complaining of my harassment and victimisation of his poor and aging father.

Reading them even now gives me that same feeling of something awful residing with Alfred in that house.

When the solicitors realized that they still had an application to face, and that because it now had a separate file number, they could no longer pretend that it was merely all part of the other action in which they already had instructions and "entitlement" to act.

The other solicitors were again not happy. They applied to the Court for directions, without ever filing an address for service, hoping to get a Judge to strike out every paragraph of my four affidavits on the assorted grounds of hearsay, bald assertion and/or irrelevancy.

By some miracle we had a Judge who did not see it their way and who reserved all further argument to the December hearing. She would, she said, do nothing so as to leave it "flexible" for the judge who would be conducting the hearing.

CHAPTER THIRTEEN

In fact, it was not a Judge who conducted the final hearing. Upon asking the new solicitor if they knew who would be the Judge -they said that the Judge originally listed to hear it had been called away at short notice to a funeral — they had no idea who would be presiding.

Well, I was quite surprised to see a short and robust elderly lady appear before us on the Bench, wearing what appeared to be some kind of floral apron and something that looked suspiciously like a mop on her head. Settling most expansively and comfortably in the chair, she beamed around the Courtroom. In case I haven't been announced, she said, beaming at the orderly — my name is Judge Juley. Well, actually it isn't, she said, my name is really Maud but Judge Maud doesn't really sound as good, so, I am Judge Juley. In case you are wondering how I have come to be here — the answer is quite simple — the Judge who should have been here, has unfortunately been taken from us, to a funeral — not his you understand, but it still makes him not here and available to hear this matter — so, as it is something of an urgency — they asked me to stand in — and so, here I am today, to listen to the things you say. I am by vocation, of course, a cleaning lady, but, and I will have you know it, I have been around these Courts for longer than the Judge 'imself, and what I don't know about the law, what

with working in these Courtrooms these past 30 years and with what I have picked up from the television — well, you could write on one hand what I don't know about the law. So, lady and gentlemen — if you are ready, shall we begin.

I opened my address fairly promptly, as I knew we only had about 2 hours to cover the entire application. I spoke for about 10 minutes. The new solicitor followed suit and spoke for a similar time. We then both waited expectantly for a comment from the Judge. Slowly she raised her head from the pile of papers and documents heaped before her on the Bench — well, she announced, with a look of some great satisfaction — it would seem that we are dealing with a matter under the Vexatious Proceedings Act — is that not the case? I assured her that it was and she then indicated that if such was the case, then she would expect to see before her certain things — such as a statement of claim, perhaps a writ and that, at this stage in the proceedings, these things did not seem to be before her. Uncertain as to how further to proceed, I said to the Judge — as counsel have just made submissions regarding the necessity for leave, is it your intention to make a ruling on that now or wait until all of the evidence has been presented and make that determination then. She looked up at me suspiciously — is what you have just been saying by way of an

application for leave — for leave you say — by what section under the Act are you asking for leave — on what basis am I supposed to consider granting to you leave — and in any event, leave in respect to what? How am I supposed to make a determination — any determination in this matter at all when the files before me are all in a muddle — I will Ms Walton adjourn this matter for a short while — and during that time, I expect you to speak with my clerk and get this muddle sorted out — do I make myself perfectly clear- upon my return the proper files and documents are to be before me on the bench. All rise — I am leaving the Courtroom now. So saying, she flounced out of the room and the door closed slowly behind her.

Well, I said to the lads, it would seem that the clerk has a bit of work to do — I'm going outside for a smoke.

In fact, the hearing didn't proceed exactly like that, but pretty close to. After the short adjournment, the Commissioner appointed to the task appeared, and he seemed to have a better idea of what was going on than the previous occupant of the chair — but it seemed that my application was still struggling.

Apparently the need for leave had now been dispensed with and I was to proceed with my application — if and when given the chance. It took a further 20 minutes to establish that there were in fact four

affidavits relied upon, each separately numbered as being affidavits 1, 2, 3, and 4, with a 5th one dealing with costs. I had just started to address the first affidavit when a new difficulty emerged — shouldn't there be another file — the original court action? I pointed out that if indeed he had before him my original application, then I imagined that he must have before him the original action as well — because, in the beginning, they had, by accident, been joined together. He looked at me carefully — you imagine that I have a file before me Ms Walton — you imagine it — how are you to know what files I have before me.

Do you, I said, have an action so numbered before you. He responded yes.

Do you also have a further file numbered such, I said. He replied — I don't know — or perhaps he said — I don't, no. In any event, in the silence that followed, he frowned a bit and then, assuring us both that he understood the situation perfectly, ducked back into the pile of papers on the bench. After a few minutes of further scuffling around in the papers, he emerged to inform us again, that, yes, he now understood the situation perfectly, and had formed an opinion that I was really as from that point, merely wasting the Court's time as he considered it highly improbable that anything I was likely to say, was likely to change his opinion that my application should in the end fail.

Undeterred, I proceeded with the application only to find that thus encouraged, the new solicitor was now electing to interrupt just about everything that I was saying — most particularly I noticed just as soon as I mentioned anything whatsoever, concerning the conduct of Kenneth and the other solicitor.

Eventually, and having become completely exasperated with my persistence the Commissioner looked at his watch, said to the other solicitor that we didn't want this matter proceeding into the New Year did we and next thing I knew the case had been closed and I was asked for submissions in relation to costs. I had barely started on that, when the new solicitor stood up and said that surely it was simple — as I had just lost both applications, and costs should follow the cause, I should be ordered to pay all and any costs, including those reserved and the Commissioner entirely agreed, and awarded all costs against me. Thus having disposed of the matter, the Commissioner then turned to me and said — if you wish to continue your complaints concerning the conduct of other solicitors -then might I suggest that you refer them to the Law Complaints Officer as you might have been better advised to do in the first place — but that bit must have been obiter dicta as it never appeared in the transcript.

I left the Court and went back to the office. "Lost", I said to my

secretary "Lost," I said — "with costs". But never mind — I received a most positive direction from the Commissioner to refer the entire matter back to the Law Complaints Officer.

But, before I could make any submission I received another letter from the LCO, enclosing a copy of an email sent to her by Kenneth.

He had, he said, been sitting at the back of the Courtroom listening to the hearing on his father's behalf and my application had been lost -costs had been awarded — his father's solicitor had made submissions and I had lost — would she now proceed to a determination of me, as both he and his father were annoyed with me for having wasted so much of his time and his money. The letter from the Law Complaints Officer was cool — it was now December she said. For the benefit of both myself and the complainant — she would order a copy of the transcript and contact me further regarding the matter, in the early New Year.

Well, certainly I had lost the application but not perhaps in a manner in which the legal system could take pride. The transcript took a long time to order, or a long time to transcribe, needing as it did to be an entirely accurate recording of the entire proceeding, or perhaps the Law Complaints Officer took a long time to consider it.

In early February I received a letter — I suspect that in the end,

the Law Complaints Officer elected to write exactly the same letter to me as if I had lost the application after a fair hearing and a reasoned consideration of the evidence. I decided to treat the letter at face value and answer it on its terms. I declined to criticise the Court, or the other solicitor. I said that I was entitled to bring the application, that it lost was no disgrace to me, costs had been awarded against me and that unless she was prepared to involve herself further in the matter, that simply was the way it was. Her only response was that as she had informed Kenneth of the content of the transcript, and had received no complaint on behalf of Alfred, then there was nothing she could or intended to do.

And so, the new solicitors, who had prudently awaited the outcome of my application, before proceeding with the action as between my two former clients, thereafter allowed case management to move them closer and closer to trial.

CHAPTER FOURTEEN

The new solicitors wrote to me, encouraging appeal, if as they anticipated, I was unhappy with the decisions made against me in December 2004, otherwise, costs orders had been made which they were entitled to enforce against me.

I advised them that I had made a decision not to appeal the matter. The Court had simply shrugged off all responsibility in the matter in my general direction.

And I knew that with a weak and servile Law Complaints Officer, any complaint made to her, about these lawyers, would simply wither on the vine — eventually.

In certain pockets of the law, as every lawyer knows, long entrenched and covert malpractice exists and in absence of due regulation continues — it not being in the better interest of either the Law Complaints Officer or the general public that the true extent of this be known.

I wouldn't have minded so much if I had got up one morning and made it my deliberate intent to become a crusader for justice and take on single handed a clearing out of the Aegean stables that the legal profession had become. That the profession would thereupon turn upon me in full defensive fury would be only to be expected. Everyone has

the right to retain and to maintain protective boundaries, and the legal profession is no exception. The concept of "public interest" is only the level of interference or threat that any structured entity is prepared to accept or tolerate to its sense of inherent power — the public interest is merely a concept, capable of being used and manipulated.

It is only in the exercise of relative power as between certain individuals and groups that the concept of "public interest" is used, so as to support an intended position.

While it may be considered better for society as a whole that the maintenance of order has priority, most would agree that this should not be at the expense of that most fundamental of human rights — the right to speak and to be heard.

It is very easy in our so called "democratic" society to assume that violation of this right only happens in other country's, or that at least, if it does occur, and is reported "someone" will take charge and "do" something about it.

That whistleblower legislation exists is an indication that people can be in need of some protection from organizations that can only see criticism or blame as "threat" and so act defensively, even to the extent of preferring to shoot the messenger rather than accept the message. There is no willingness or capacity to effectively deal with the real

issues raised, except in terms of perceived "threat" which has to immediately be expelled, got rid of, denied. So much easier — and less stressful to maintain the status quo.

If only the Commissioner had gone to the trouble of reading the file and made a rational and reasoned response to my application before throwing it completely, I suppose that it would not have become such a problem. The appearance of integrity could have been maintained and everyone saved "face".

But whether it was merely incompetence or deliberate mischievous intent, the total lack of "judicial" input in the decisions made against me in December of 2004 could not be simply swept under the carpet as if it had never occurred.

The Law Complaints Officer had done a masterly job of converting the earlier summary judgment into a controversy over whether or not I had breached my clients confidentiality, and still had quite a volume of work on her plate in order to effectively cover and conceal, in similar manner, all or at least the most serious of the remaining issues concerning the "legal" representation of Alfred in the litigation, and the involvement of the other solicitor and Kenneth in Alfred's matters dating back to September of 2000.

No doubt she hoped that in the inferno of the anticipated trial of

"issues" between my former clients which was expected to take place later in the year — most of the "facts" would stand ragged and battered, leaving nothing much for her to have to deal with — indeed hopefully, there would be nothing left at all.

Probably, the Law Complaints Officer would have done better to have simply left the December 2004 decision as it stood, noting that as I did not appeal it, it was my decision to let it stand and for me to take the consequences of that.

But, no, it had to be made my fault — my shame and blame that such a travesty of justice had occurred. Whatever else — no one could ever accuse this zealous, industrious Law Complaints Officer of merely sitting around and fiddling.

Her letter to me of the February 2005 was rather like an address to a child who has come home and discovered incest in the house — why did *you* come home so early, why did *you* not knock at the door.

The Law Complaints Officer had carefully noted an absence of complaint, on behalf of Alfred Murphy concerning the content of the transcript and proceeded to make use of that to justify her own lack of activity on Alfred's behalf. Quite understandable of course — Kenneth and this other solicitor had got exactly what they wanted — why would *they* complain!

So, as at the beginning of 2005, I was still in it up to the ears, with, as it seemed to me, ever diminishing prospects of the issues ever being properly resolved.

The new solicitors had been very patient, and still had not enforced their costs orders — indeed they tried their very best to achieve a negotiated settlement with me, but I was difficult and would not come across with the money. My obtuse behaviour meant of course that they now had to apply to the Court to have their costs assessed, and the bills when they came were totally botched and what should have properly been either two or four separate bills had mysteriously been co-mingled into three, one of which was the "indemnity" costs bill — for which, only a token amount was being claimed.

Eventually the day arrived for the costs assessment and I was not surprised to see Kenneth outside the Courtroom door, lounging in a chair, so that there would be no delay to him in finding out the amount of the costs awarded for — or against — his father, depending on your view.

Although I had made previous applications and submissions that the Court should not proceed in the matter until such time as the retainers had been investigated by the Law Complaints Officer, these had been largely ignored and the assessment was inevitably listed. I

made one last try to bring order into the matter — outside I said is Kenneth — part of these retainers charged against me were conducted upon instructions from him. He remains outside because he is not a party to these proceedings — and not entitled to be involved — by law he had no more right to have involved himself in his father's legal matters — the assessment must be adjourned. The Registrar took my point but proceeded with the assessment.

In giving reasons for his findings, he made it absolutely clear that nothing further should be done unless and until the Law Complaints Officer had completed her enquiry.

"You will get your hearing" the Registrar assured me, observing Kenneth jumping up like an excited puppy as we all emerged from the courtroom.

Well, he had more faith in the brakes on the truck at that time than I did, so his words did not provide me with any hope at all that the Law Complaints Officer would actually be responsive to his direction — much less the new solicitors who immediately that we were out of earshot of the Registrar politely advised me that they had instructions to issue property seizure warrants against my land and property if I didn't settle up with them very promptly.

By this time, there had been a listing of the long awaited "trial"

and it was called into question what role if any I should play.

You must not give evidence, said the Law Complaint Officer.

What if I am subpoenaed I asked.

Well, in that case you must surely give evidence.

But in an unlawfully conducted process — I need not answer, if I choose, to anything that is improperly issued — that is the law and the authorities support it.

In that case you must go and provide only limited evidence, said the LCO.

I said once admitted to the oath, I am duty bound to answer to all questions.

But, wrote the Law Complaints Officer in some exasperation -" I want to know *now* — what are you going to *do*." I wondered what she would have been like as a child, on a long and tiresome journey.

A meeting was arranged with the barrister who was to conduct the defence of the action — Mr Orville Woodmouse Brown. He was a jovial sort of chap but even his air of general optimism was subdued.

" I don't like the Defendant's chances" he said — "not against the family". I responded that I could see no reason why my documented history should not be accepted by the Court — and he looked at me with a quizzical frown — as if wondering from which particular planet I

had recently descended. It was not of course the first time that I had caused such a look to appear on counsel's face -in fact it gave me a certain amount of pleasure to be stirring up the possum — not that I ever permitted any opinion of mine as to how the law *should* be conducted to ever give to a client false hope. Well, we decided in the end — we will just have to go there and see what occurs on the day.

I went back to work to be told by my secretary that she had seen Kenneth standing around outside on the pavement and looking through the door, but that he had not attempted to come in. A few days later my secretary said that she had seen Kenneth again — briskly walking down the street and glancing towards our office. I wrote to the Law Complaints Officer and asked her to enquire of Kenneth precisely what his interest in hanging around our office was.

The matter was noted but apparently Kenneth had every right to be where he wanted to be, when he wanted to be and there was nothing to do about it.

Fortunately, my secretary and I had already made some decisions concerning the future of the office — with the end of the lease, babies on the way and me not wanting to educate yet another secretary into the realities of life where professional complaints were involved — I decided to work from home. I intended to cut back on my

work so as to do only small conveyancing matters and wills — and the occasional guarantee.

To be sure of earning enough money, I had been attending an aged-care course and fast-tracked to a Certificate III. My counselling studies had by then progressed to a Certificate IV so all in all, I was feeling quite happy that I would soon not have to go out to an office each day which for the past year or so, had felt more and more like a rat trap. I had in fact moved offices once before during this conducted "complaint" matter, and it felt as though the complaint had followed me and crept in too — and settled itself quietly into a corner like a half tonne delivery of unordered sheep manure.

In any event, I was notified as to the trial date, spent some considerable time reviewing the files and was told that I would be given about an hours notice when and if required to give evidence. So, after sitting around for most of the day I called the Defendant's solicitor early the next morning to see what was going on.

"Oh, that matter was settled yesterday — you won't be needed to give evidence — no one gave any evidence — it was settled — on terms confidential to the parties", said the Defendant's solicitor. So that was the end of that.

It was now October of 2005. I wrote to the Law Complaint Officer

— the action is finished and done with — please proceed with my complaints of December 2004, as against these lawyers and the others who have had conduct and control of Alfred and his money since the middle of the year 2000.

The Law Complaints Officer did not exactly refuse — she merely stated that firstly, the other solicitor was under no obligation to be making any form of statement in relation to the matter, that I had provided insufficient details, despite repeated requests from the Law Complaints Officer so as to enable my 2004 complaint to proceed, and that she was currently in the process of obtaining instructions from the Committee as to how further to progress the considerable number of very serious complaints currently outstanding against me.

It was suggested to me that if I had any complaints concerning judicial process that such matters needed to be referred to the Chief Justice of the relevant Court. Of course, I was being set up for a fight, something that I thus far tried to avoid — but I walked right into this one.

Upon my first complaint concerning the conduct of the Commissioner, the Honourable the Chief Justice Honoraria Constance Milldew simply told me to appeal.

I responded that it was not a matter for appeal, but for her proper administration of the Court that this officer, who did not appear to have

even read the file, much less know what he was doing, who had wasted my time and cost me money, be regulated out of the system. She refused and accused me of insolence and extreme rudeness, whilst declining absolutely to even open the file to look.

So, I wrote back and told her that if that was the manner in which she saw fit to administrate her Court — then she was herself a professional disgrace, and that having been said — I heard, at least from her, nothing further in the matter.

By now I was conducting a reduced legal practice from home, enjoying a bit of "space" and spent the Christmas of 2005/06 working in an aged care hostel. It was interesting, different and restored to some extent my good faith in human nature.

Needless to say, when the Law Complaints Officer suddenly found out that I had "escaped" from the office, I was harassed and pestered for weeks concerning my departure, as if I was some sort of criminal holed up in a safe house — so different from the complete indifference shown upon the somewhat more hurried departure of the other solicitor from practice at the end of 2001 — but then, of course — *he* had gone to the Bar.

And of course, the new solicitors for Alfred were still agitating for their costs. So, it was that at the end of 2005, I decided that I would get

the matter into the Supreme Court — by means of sending to Alfred an account for services rendered by me, since December of 2000. Now this procedure was not at all out of order as it was later made out to be.

The rules are quite clear — if during the conduct of a legal retainer, a client has become for on reason or another under a legal incapacity to act so as to provide timely and appropriate instructions — that circumstance does not at all discharge the legal retainer. To the extent that the solicitor is able, they are required to try and complete and maintain their conduct of the client retainer, and that I considered I had done.

At very least, I was entitled to take that position before the Court — and have the issues sorted out judicially, as clearly the Law Complaints Officer was a somewhat blinkered filly who had certainly refused the start, where my complaints about the other solicitors, on behalf of myself, Alfred Murphy and in the "public interest" were concerned.

I worked out that the downtime of dealing with this matter could be most conservatively costed at about \$100 per day since December of 2000, based on a five day week. I put in a discounted reduction and delivered to Alfred's solicitors a bill of costs to Alfred for around \$200,000. Believe it or not, the first thing that they did was to request

me to itemise it, and then complained bitterly to the Law Complaints Officer that I was victimising and harassing them in relation to the matter.

She naturally wrote to me rather than to them seeking details of the matter.

By then it was Christmas 2005. Mercifully, they all went off on leave for Christmas and I didn't hear from any of them for at least a couple of weeks.

Now the account that I had issued to Alfred's solicitors did have capacity, if properly conducted and progressed through the Court to sort out most of the issues concerning the earlier conduct of the other solicitor back in 2000.

Although I managed to get it through the Supreme Court door, before my fate overtook me, it unfortunately got grounded in listings — and so, there it remains to this day.

CHAPTER FIFTEEN

The year 2006 and the Law Complaints Officer still had not made any move whatsoever with regard to getting these "holding" complaint matters as maintained against me finally resolved.

Firstly, I became aware that the new solicitors had, earlier in 2005 in fact placed their property seizure orders against my land and property. Having no longer an office at which to harass and publicly embarrass me, the Sheriff had come to my house and had a look around. I had filed a notice of objection to his seizing various items of personal property and in any event, the Sheriff formed an opinion that there was no personal property in or about my house that would bear the cost and trauma of being taken to the auction and realize for the judgment creditor any possible commercial return. A sale of my real property was indicated. However, these property seizure orders only last for about six months before they need to be renewed. The sheriff did not want the orders to be lapsing in the middle of the sale procedure — he required the new solicitors to return to the Court and make an application to extend the term of the orders for the purposes of sale.

The application would require these solicitors to make an affidavit of due and continuing debt and authority from the judgement

creditor — Alfred Murphy. I could understand that whilst they might like to extend the existing orders — to make and file such an affidavit would involve to them some risk — it being the intended purpose of this legal requirement to ensure that due process has and continues to occur.

As a result I received from these lawyers a letter which was clearly intended to encourage me to pay to them this money, without further recourse to the Court.

We suggest, they said, you pay this debt — or run the risk of falling foul of the Committee. I assumed then that they meant the Complaints Committee.

Feeling pestered, I decided that it was about time I confronted the Law Complaints Officer in person. Although for convenience I have referred to all correspondence to me from the Law Complaints Officer as having come direct from her — in fact I received only one or two letters directly signed by her. She delegated every file to someone else and in fact several Law Officers handled these complaint matters over the years. However, one should not be misled by that into thinking for one minute that this absolves the Law Complaints Officer from any liability or personal responsibility. It is only in hindsight and upon a file review that the pattern emerges and readily can be seen — the transfer of files to the various officers enabled cut offs and for officers new to the

file, in absence of actual knowledge of what had previously occurred on the files, to proceed as if nothing was wrong. If one person had had the control of and responsibility for the conduct of the entire matter — they would be clearly liable to be charged with misfeasance of duty of their public office. In my opinion, that person would be the Law Complaints Officer but no doubt she would take a different view and argue it long and hard.

So, I was not happy, and demanded to see, in January 2006, the Law Complaints Officer in person. Thinking that I had only an hour to spare, she was 20 minutes late for our appointment. I had expected someone of a more commanding presence but she was merely an aging spinster-type and unable to maintain any level of proper conversation. My attempt to "discuss" the issues was somewhat like trying to get an ATM to perform a transaction outside its programmed range of function. I felt something of that initial "jolt" that you feel when you unexpectedly encounter dementia. I sensed her rising agitation when I said that I didn't in fact have to leave exactly on the hour.

However, — there was a short period of perfect understanding. At one point — she said to me most carefully — as far as we are concerned, regarding Alfred Murphy — you did nothing wrong, but with your applications, you are just getting yourself in deeper and deeper.

I said it felt to me more like that someone had thrown a net over me and was pulling it tighter and tighter. She didn't disagree and strongly recommended that I select from their panel of counsel a lawyer to represent me. I told her I would get a solicitor when I thought I needed one but reminded her that as yet I didn't even know what charges were against me. I complained that she had done nothing whatsoever about the hearing of December 2004. All she then did was to hurriedly check with her clerk to make sure that they had already obtained from me all of the relevant papers, and having satisfied herself in that regard, refused to answer on the basis that she was unable to give me legal advice.

It wasn't much of a meeting and it didn't sort anything out. Under the new Legal Practice Act of 2003, and according to what was put out and about in the community generally, the Legal Practitioners Complaints Committee was, together with the office of the Law Complaints Officer a totally independent public body entrusted with the regulation and control of the practice of law and the legal profession.

It was wholly independent of the Legal Practice Board, and performed an independent function. In fact, the reality was entirely different — as I was to learn at my cost and expense.

The Complaints Committee consisted of volunteers from the

profession who gave up their time to serve upon this Committee which regulated and considered matters referred to it by the Law Complaints Officer from time to time. As busy professionals, with a considerable workload — heavy reliance was placed upon the integrity of the Law Complaints Officer and her capacity to investigate and present to them complaint material in proper form. I personally do not regard any of the members of the Complaints Committee as being personally responsible for what later occurred. The Law Complaints Officer, as I discovered later, in fact took her direction and authority from another Committee — the Complaints Committee was just used by her and by them to authorise and "rubber stamp" their conduct.

The Complaints Committee was good enough to deal with the routine stuff but where any matter concerned issues relating to "image" and the protection of the industry from possible disgrace — the Law Complaints Officer acted upon instructions direct from and was beholden to the Legal Practice Board.

I should have realised this far earlier of course. In fact it was not until early 2006 that I had direct proof of it by reason of the Law Complaints Officer sending to me a copy of a letter, appearing to forewarn the Board of the developing situation and tacitly seeking its approval — there would appear to be no particular reason why a copy

of such a letter should have been sent to me at all. In fact, it was not until I was actually served with applications to be heard before the SAT, that I finally saw this "complaint" procedure against me for the scam that it had become.

I had been well and truly "netted".

I realised how, in dealing with my complaint, the Law Complaints Officer had acted so as to deliberately have Kenneth excluded from the complaint when originally I had included him in with the other solicitors. It was only then that I realised the somewhat "incestuous" nature of the complaints procedure itself.

What really happens is that the Law Complaints Officer appropriates the "complaint" and then regardless of and without reference to any external evidence or fact, basically decides what form the complaint will take.

Provided that you can in fact operate without conscience or concern the job is quite easy to do — removing, changing, adding to the "evidence" until the intended result is obtained — until you get the perfect "fit".

In 2004/05, it had been pointed out to me, by the LCO, that my complaint against Kenneth, that he had breached the Legal Practice Act in procuring from his father the authority for file transfer to the other

solicitor, back in September of 2000, needed to be dealt with by the Board because Kenneth was not a legal practitioner.

I was directed by the LCO to make complaint to them, which I duly did, setting out the then history of the matter. The Board considered the matter and reported back that it did not consider that Kenneth had in any manner breached the Act — and that clearly there was insufficient evidence to be making any findings where the conduct of the other solicitors involved was concerned.

I duly forwarded a copy of this response to the LCO and she confirmed receipt.

Through me she had sought, and appeared to have obtained, from the Board, a general direction regards the further conduct of the matter, with no risk to herself in having brought these matters to the attention of the Board, and with apparently no further requirement of her that she seek and obtain more evidence.

My only previous dealings with the Board had been administrative, such as at the time when I re-located my office in the year 2003. I sent to them a letter of advice, and they responded with a letter of acknowledgement, and noted their records accordingly.

However, when I closed my office down, in the year 2005, in the middle of these complaints and said I was working from home,

apparently this advice required them to be sending me all manner of enquiry and correspondence regarding their concerns about the matter, regarding the current location of my office and seeking further clarification as to how and from where I now conducted my practice.

By the time the Board had completed to its satisfaction enquiry and query into my re-location of 2005 — and over a period of a few weeks, I think that we must have exchanged around 20 items of related correspondence — just to establish that I had actually moved and also to ensure that, in the public interest, the Board still had a current record of my personal and professional address for service of documents.

I assumed that all this flurry and scurry was just part of their general inability to deal with any activity of an unexpected nature otherwise than in terms of general uproar — it was only later that I realised — it was just to create an appearance of me having been "difficult" about the matter — of the strenuous efforts that they had had to make in order to get me to properly answer to them at all.

CHAPTER SIXTEEN

February 2006 and my assumption that the Law Complaints Officer had not been bothering herself too much regarding bringing the matters of complaint to a final conclusion was proved to have been entirely incorrect.

Clearly, she had in fact been being a very busy beaver over the Christmas break, and since our meeting of early January 2006. She was now in a position to advise me that the Complaints Committee had recently met — and finally formulated a list of complaints against me. There were six of them.

1. *Signing a Certificate incorrect in a material particular.*
2. *Failing to render an account for fees.(2000)*
3. *Interfering in the District Court Action.*
4. *Revealing confidential information.*
5. *Raising improper bill of costs (2005)*
6. *Discourtesy to the District Court Chief Justice.*

As regards my conduct of matters on behalf of Alfred Murphy as between 1998 and 2000, there was no complaint at all.

I noted that the letter from the Law Complaints Officer on behalf of the Committee, went on further in listing a series of less "serious" complaints against me which it had selected from the pile. These it was

said were considered by the Committee and my conduct had caused the Committee great concern.

I noticed quite clearly that it was at those times when the conduct of the other solicitors seemed to be most reprehensible — that is exactly where similar and related complaints were made about me. The legitimate complaints that I made, were each turned into somewhat spurious "complaints" about me.

Technically it is called projective identification — and it can readily and simply be observed in any infant playground:

"Liar, Liar — pant's on fire!!!"

"I'm not a Liar — *you* are!!!"

And woe betide the child left behind, when the other runs off to tell the teacher:

"Miss, Miss Mlss!!!" — in ever increasing tones of distress — "Little Annie Sodpot -

Miss! — she's been telling *lies*".

Fortunately for the children, teachers are well aware of these tactics used by children and indeed it is most usual to deal with the matter by asking the other child first, as to exactly what took place.

Not so of course with the legal profession where emotional maturity is expected to correlate with age and experience, by some —

and by others, assumed not to have any relevance at all to a capacity to properly conduct the practice of the law.

And so, in terms of this letter, of February 2006, the majority of my complaints as against the other solicitors had been directly reversed and turned into complaints against me.

By way of example — my allegation as against the other solicitor that he had acted improperly in rejecting my offered Deed of Settlement in early 2002, and without any or proper instructions from the client had been implicitly ignored by the Committee as a complaint to be answered to and dealt with by the other solicitor. Instead the complaint was not merely negated or denied — it was simply re-stated and then dealt with as being a complaint against me. I had improperly demanded a settlement. of my former clients matters, the Committee declared, without being at all informed as regards the facts, but in view of the serious nature of the other complaints that it was otherwise maintaining against me — well, they were simply not going to proceed with this complaint, against me, at all.

The Committee then went on to say that *none* of these stated incidents would be proceeded with further as complaints against me, because the Committee considered that although in each case I had very likely committed some offence there were enough other issues to

be dealt with already.

Without having studied in some depth the underlying dynamics in such a forced "encounter" with a deceptive and all powerful "other", it would be quite understandable to feel overwhelmed by rage and totally disempowered. This is achieved firstly by giving you no place in which your right to speak can be heard — yet by their own authority — it is only in this place that your right to speak can be heard. Secondly, in place of your complaint, is put a complaint against you, which essentially covers the same issues as your own complaint. If allowed to defend yourself, certainly you could get a chance to bring up in the same context the matter of your complaint — but, graciously, you are not required to do that — the complaint against you, though made, will not be proceeded with further. Indeed, you should be pleased — and indeed grateful to the Committee, that it is not proceeding, in your assumed favour, with its complaint against you, in relation to the matter.

The face of the record shows a benign and somewhat paternal Committee doing its best to be fair and reasonable to a culpable practitioner, but coupled with the facts, which such decisions never are — it represents a most ruthless denial of justice, — and the promotion of grave injustice for the sole purpose of protectionism in the profession and the casual exploitation of the one perceived to have less power in

the situation.

It is a bad situation for an adult person to find themselves in, and when as, all too often happens, this perception of an absence of law, leads to an outburst of frustrated rage — again there is no place to put this — it remains as internalised and corrosive anger — if you return their bullet points in a similarly concrete manner *you* will be locked up as being a menace to society — as having a criminal or insane mind.

Upon further analysis of the content of the letter, I realised that in fact each of the six charges to be brought against me in the SAT, had similar direct correspondence to the more serious issues that I had raised against the other solicitors relating to their conduct in this matter. The letter was dated 9 February 2006.

By notice served upon me, 10 February 2006, the LCO advised that she was empowered terms of the Legal Practitioners Act 2003, to attend at my house to conduct a "practice inspection", and I was to prepare my files and records for her inspection of them. Could I please make contact with her to arrange a mutually convenient time for this to take place.

CHAPTER SEVENTEEN

The Law Complaints Officer herself and another officer attended my home and placed themselves in the lounge room. I didn't actually see clients in my home and was conducting a mobile service. I recalled the earlier visit of the Sheriff, and felt as though they were somehow violating every boundary in having now actually wormed their way into my home.

Like Alfred, I enjoy (or at least I did!) my privacy — but this violation by Kenneth, the other solicitor and now the Law Complaints Officer of our private retainer seemed to have torn that all apart. I felt like I was now being made to act like some kind of puppet — dangled on a string, being made to play a part.

I offered coffee, as you do, and then produced the files. After asking a few questions about some of the files which I considered to be more confirming of their ignorance of any kind of law than of any use at all, they then asked about my practice and how clients contacted me. They ring me on the phone I said and then I go out and visit them. I'm doing exactly what I used to do in the office, except on a smaller scale. Like visitors from another planet they seemed quite intrigued by this and as to how it was actually managed.

Eventually, they opened up one of the files and I told them that it

was in fact a precatory trust. This apparently was a sufficient basis for the file to be immediately snaffled, and it was taken away with them for further examination and scrutiny.

I had barely washed up the coffee mugs when I received a fax from the Trust Account Inspector — further to her most recent trust audit of late 2001 — she had just decided, quite unexpectedly and of course quite independently to come to my office to conduct a further practice audit, and to check on the trust account.

Well, she came out and took away the trust account files. Normally I attended my accountant in early April to complete both my income tax and trust returns.

Not this year! There was this problem and that with the trust account and it was said to be overdrawn, by a considerable amount of money — nearly a thousand dollars. So, I had both the Trust Account Inspector writing to me querying the books, and the Complaints Officer writing and querying the files, which would have been all very entertaining had I had nothing else to do — but I considered it to be a somewhat connived and deliberate disturbance. I was given back the trust account to take to an auditor, and he suggested that I take my books to a bookkeeper first to be sorted out, if, as the Trust Account Inspector claimed, there were errors in the books. For small fee, the

bookkeeper went through my trust account and confirmed that the banking and disbursements were in fact in order — but that some of the ledger cards had not been written up properly causing this apparent discrepancy in the records. I duly notified the Trust Account Inspector that there was in fact no real problem with the money — just that some of the ledger cards needed to be corrected. February merged into March and suddenly, the Trust Account Inspector contacted me and said that I could come in to see her regarding the books. When I got there, by appointment, she was still away at lunch. Wondering what to do while waiting, I decided to slip over to the District Court and take a look at the Court File for the action between my clients that had been settled in October 2005. I actually went in because I wanted to obtain copies of the writ and the statement of claim, purely for my own information and interest.

But, as I looked through the file, I was amazed at what I found there and so ordered copies of nearly 40 sheets of documentation, and took them with me to the meeting with the Trust Account Inspector.

I found the note from the Registrar which caused the mis-listing of my Vexatious Proceeding Application, a note from the Chief Justice to someone asking him what on earth she should do about my correspondence concerning the hearing of December 2004 — the

transcript of the summary judgement and a variety of pleadings.

Nothing disconfirmed my belief and understanding that Alfred Murphy would have been somewhat stitched up had he proceeded to the trial but I still wondered as to what had been the eventual outcome.

I decided on the strength of it to write again to the LCO and asked her to obtain more evidence from Alfred's last solicitor as to what had been their retainers with him.

The LCO said that she didn't consider the paperwork in respect of Alfred Murphy's retainers to be relevant at all but that she would make enquiry of them.

They sent over to the Law Complaints Officer, a copy of their retainer and also a power of attorney — not the one from the year 2001, but a new one — an enduring power of attorney typed out in standard form. Well, the form was there alright.

Enduring powers of attorney need to be signed by "competent witnesses" — mainly registered professionals such as pharmacists, bank managers, and real estate licensees. It is extremely difficult to get hold of two of them together to sign these documents, and in fact I had at one time complained about the difficulties in signing caused by this requirement. I was told that it was somewhat intentional so as to ensure that some formal arrangements for signing needed to be made — to

discourage relatives from writing them out and then quickly getting a couple of kindly neighbours to come over and sign it up.

I saw the sense in that and tended to agree. Once many years ago I had to attend to a probate in which a relative needed to be found, last seen in about 1950 when they jumped ship in Calcutta and who no one had heard of since. I thought the probate office to be most unreasonable in maintaining this requirement, but lo and behold, we searched high and low — and they were eventually located in Queensland. Since that time I had more respect for patient enquiry and due diligence, rather than for "quick fixes" in the practice of the law.

The Law Complaints Officer sent copies to me and still maintained that neither the content of the retainer nor the power of attorney was at all relevant to the matter. Looking at them, I was not at all surprised to find her so defensive.

A paragraph of the retainer had, at some time, been crossed out in a shaky hand and initialled by Alfred — and countersigned by the solicitor.

The paragraph had contained words to the effect that this retainer constituted the whole and entire agreement between them, and I noted that it had been sent out to Alfred for signing in mid 2005, shortly after the letter of demand to Mick, that had somehow been sent

out to Jack, and that the retainer agreement itself was signed and dated sometime later.

And — the enduring power of attorney. Well, Jack was not a competent witness within the meaning of the law but he had signed it, as a witness. The other witness was the new solicitor. This power of attorney had been signed up at the end of March 2003 — a few days after the failed summary judgement proceeding. The donee of the power was Kenneth — and he had signed with a signature that looked like a child had got hold of a biro and ground it into the page in an intricate circular squiggle.

"It's invalid" I told the Law Complaints Officer. She responded that it was not a material document anyway and could provide no basis for further enquiry.

It turned out later, and was confirmed to me by a family member, that what had happened after the failed summary judgment and upon his having read the content of my affidavit was that Alfred did try and finally put his foot down once and for all and refused to provide these new solicitors with further instructions.

And so, why was a new power of attorney created? To enable, as they thought, Kenneth to provide them with further instructions, so as to empower them to maintain the suit, on behalf of the other solicitor —

against the youngest son.

But the Law Complaints Officer could not and would not see it — she dug in her heels absolutely — this dead horse of hers that was the complaint against me, it just had to be made to get up and run — otherwise a lot of people could be getting into trouble — and by then the LCO could well and truly count herself among them.

I had spent a lot of time since December 2004 trying to explain one very simple issue to the Law Complaints Officer — yet she never could or would see my point.

Section 126 of the Legal Practice Act 2003 provides that no solicitor shall act as agent for another unless that other person is himself a certificated legal practitioner.

Professions such as the real estate industry and builders have very strict rules where "farming out" one's professional ticket is concerned, and strict penalties apply as a consequence. In terms of s. 126, the legal profession is no exception.

A solicitor without a client is rather like the sound of one hand clapping — it is only in the context of a legal retainer that a solicitor can function — for and of behalf of his client. The solicitor is bound to act in accordance with and within the terms of his agreed retainer — he cannot act as an agent — to do as he likes, as and when he likes, and

as and when he wants to.

Therefore, a solicitor can only act as such when acting upon instructions from a client, in the context of a retainer between them — or otherwise not act at all.

Any solicitor who acts in a legal matter, upon what are in fact merely "orders" to him, from a person who is neither a client nor himself a practising lawyer acts in breach of the law. It is as simple as that. Kenneth was not himself a lawyer and although he purported to have a power of attorney — this did not give him capacity to instruct any lawyer, on his father's behalf without *himself* having entered into a legal retainer with the lawyer.

Whatever our other differences of opinion, there was never as between the Legal Practice Board and myself any question that as far as Kenneth was concerned, he was not and never had been, a certificated legal practitioner. So, where, I asked, was his legal retainer with Alfred's new solicitor. Of course, he never had one.

The power of attorney did not give to him the status of a certificated legal practitioner to conduct his father's legal matters. Kenneth like anyone else needed to enter a legal retainer, whether acting for his father or not, before he could, lawfully, instruct any solicitor to act.

To illustrate the difficulties that may otherwise arise — I once had a case of a genuine son who wished to help his father. The neighbour wanted to construct a house that needed underpinning that would encroach into and under the father's land and dwelling. He wanted a Deed that could be signed to cover any damage. I undertook to do that. I could have merely created a Deed as between the father and all other relevant parties — the neighbour, the builder, the insurer -engineers and even the local authority — but such a deed would have been to no avail. Before I even started — I conducted a search of the father's land — and found he didn't own it.

He still owed money to Homeswest, and he thereafter referred the matter to them. It may have cost me a job, but at least I had not purported to act without due authority or consent in the conduct of this "retainer". Personally, I thought that the "affidavit" by which Alfred declared himself to have consented to the action should not have been regarded as conclusive without the Law Complaints Officer having first conducted an independent enquiry into the antecedents of the matter.

But, as the new solicitors complained — they didn't think they were doing anything wrong — indeed it was not until Ms Walton's applications that the flaws began to show. To be fair — they did on several occasions request direction — but the Law Complaints Officer

merely goaded and encouraged them to continue to plough on.

To this day, the Law Complaints Officer is in denial that a solicitor, in order to properly act, is in need of a proper retainer — with the client *and* with any instructing person. That it otherwise creates an absence of law was beyond her comprehension, and that it constitutes unlawful conduct when, as in section 126 of the Act there is an express prohibition against so acting, she refused to accept at all.

And so we proceeded into the March of 2006. My trust account remained with the bookkeeper, my practice and my conduct of client files subjected to regular letters from the Law Complaints Officer containing irrational queries and enquiries to which I was supposed to make rational reply

. In the end, I stopped answering to one series of questions — only to receive a very demanding letter — if I didn't make an answer soon — I would be called in to be examined on oath about it. Nothing at that time would have given me greater pleasure — but as previously this was intended as a threat, not an invitation and somehow, I never heard from them any more about it.

But that as I later discovered had more to do with the fact that the Law Complaints Officer had by now received her ok from the Board to be proceeding to the SAT with her six complaints about me.

CHAPTER EIGHTEEN

Firstly, the State Administrative Tribunal is not and does not purport to be a judicial body — it has a wide discretion as to the conduct of its proceedings and complete freedom to hear anything that it might consider to be of relevance without needing to apply the strict rules concerning evidence. So, any Respondent brought before it is considerably reliant upon the integrity and upon the personal disposition of the presiding officers as to what they have to face at the hearing.

In cases other than the vocational regulation of solicitors, the parties need to define with some precision the charge faced or the decision to be reviewed — only the Legal Practice Board has the right to apply direct to the SAT, without any prior finding, hearing or indeed any understanding whatsoever of what it is precisely that they are in fact presenting. Any old stuff will do — the SAT will surely get the gist of what findings they are supposed to make in the general context of accusation and innuendo.

Well, to give the SAT full credit, even though they had only the morning and considerable volumes of confused and confusing pleadings, as submitted by counsel for the Applicant LCO, they sussed out quite early the fundamental issues — justifiable intrusion into an unlawful maintenance of suit — and circumstances which might well

justify extreme rudeness to a judge.

And indeed they did try at least to prise from counsel a little more as to what these issues might involve — but counsel was both conveniently uninformed and unable to be helpful. He understood that perhaps the issue of maintenance of suit was touched upon but that was certainly not the subject of these applications as having been brought against the practitioner Walton, and as to her rudeness to the judge — well, he could imagine that there might be circumstances in which a communication of un-political correctness might be sent off to a judge — but he couldn't right then think of anything in particular.

So much for the duty of counsel to fully inform the Court -but in all fairness to him, I do understand the situation — he was in fact then functioning at the very limit of his information and professional capacity.

It is long established law in the context of tribunal hearings, courts martial and disciplinary actions generally that no Respondent can be made to answer to allegations or to innuendo — facts must be alleged, with some precision, and the resulting offence defined if a Respondent is to have a fair opportunity to properly respond.

Not only was the Law Complaints Officer totally out of order, she clearly understood that by putting a cartful of straw before the horse, it is very tempted to feed, even if it knows really that it should be walking

around it, to get a proper job done. The SAT had an application before it but the Respondent had not appeared — that, with all the confusion surrounding the actual allegations was clearly enough to make them react. To suspend this respondent who hasn't appeared — with no thought of adjourning the application until more papers and facts could be provided to it by the Applicant, some of which were most demonstrably "missing" despite the immense volume of paperwork presented. In the normal course there is a duty upon counsel if producing a particular letter, to also provide to the Court all correspondence which immediately relates to it — it is not the responsibility of a defendant to meet any shortfall in this regard. Again, to give them their due, the SAT did notice and enquire about some of the missing documents — only to be told that counsel had been instructed that they were not considered relevant, which apparently the SAT decided was an acceptable position. The proper course is for any document which relates to a matter which a party will not produce should be considered as being adverse to that parties claim. Not in the SAT — they just let the point slide.

The series of applications referred to facts, allegations and points of law in terms of the headings. Then followed a recital of events by the Applicant in which such facts, allegations and law were all muddled up

and completely confused. It was impossible to deal with as set out — and quite deliberately so.

The SAT did have the option of requiring this mish-mash offering to be put into an answerable form, to be re-filed and further served.

But, as with the application of December 2004 — it could not be readily adjourned without a suspicion arising that any person from the ranks of the legal profession who would make such an order, must be out to make "trouble" and so must be considered "unsound". In any case of doubt — it is better to push it along and let someone else deal with it — or a party can always appeal.

The SAT had read the application — they saw Alfred's statement that he was perfectly happy with all of his matters as conducted by his lawyers but that for some reason and at one point he had decided to allow his son Kenneth to take over and conduct for him all his further legal matters — in fact since March 2004. He wasn't upset at all about his loss of pension. Indeed a part pension had been, quite coincidentally, applied for in his name, also in about March of 2004 and by August of that year — he was in receipt of belated and further pension payments — no, he had no complaint about it at all.

The SAT read the affidavit of the new solicitor. He had acted for Alfred, true enough, but had not been concerned as to Alfred's rights or

indeed his potential entitlement as against this Respondent, who was now brought before the SAT, on professional misconduct charges, The SAT definitely tried to establish what precisely of the original complaints made against me still remained before the SAT, but with counsel at a total loss to discover anything of relevance, the point was again passed over.

And so the complaint applications proceeded which originally must have had some relevance to alleged misconduct of Alfred's legal matters by the Respondent, after all, the SAT applications were brought and maintained against me, in his name, but somehow any connection as between the current complaints against me, and the source of the original complaints had become quite deliberately, quite intentionally and quite completely lost in the "wash".

It was the money from the younger son that they were after, said the new solicitor, upon oath — that had been the full extent of their instructions and as to a legal retainer — well, they had done the job requested, the client had signed a retainer agreement for the action — they had even taken the precaution of getting him to sign another one for the second vexatious proceedings action just before the hearing — they had a power of attorney — what exactly was the problem! Why shouldn't they take instructions from Kenneth when Alfred informed

them, after the failed summary judgement in the March of 2004, that he didn't want to talk to them any more.

Indeed, now that he was upon oath, and before the SAT, Alfred had absolutely forgotten most of what happened for the duration of my retainer — he pretty much had forgotten that he had even made complaints about professional misconduct against me that might have entitled him, if true, to recover his losses from me quite easily by claiming against my insurers. Indeed, — all that he had wanted in mid 2003 was to chase up his younger son to get some money out of him, based on the transactions that both he and his son had entered into in both 1998 and 2000, through my office.

Alfred's alleged earlier and somewhat vindictive enthusiasm for the bringing of fictitious complaints against me seemed to have faded away. Like a mirage on the horizon — when we finally got to the SAT for investigation of those very complaints — they proved to have entirely disappeared.

Even though I decided not to attend the hearing, as was noted by the Tribunal, I did take an earlier interest in the matter and indeed had attended at most of the earlier procedural hearings. I most certainly had done my best, prior to the hearing, to state my position regarding it, and to have the proceedings regularized.

With respect to the six applications — :

The first charge was that I had signed a document, incorrect in material particular.

Between April and June 2006, I tried to ascertain what precisely that material particular was. Because although it had been suggested that it was my omission to delete the name of the second Borrower from the document that was causing the distress — the evidence provided did not confine itself to that issue alone.

Instead the application ranted and raved, by inference and innuendo that I might have acted in a conflict of interest situation. Much effort and determination had been applied to creating that impression, by a selective misuse of the facts and I told the Law Complaints Officer that I wanted to know exactly what I was expected to do in order to answer to the charge. But the Law Complaints Officer was unable to provide legal advice to me, and suggested that if I was finding it difficult, to as previously suggested, get myself a lawyer — and preferably one from the panel.

The second charge related to my having failed to render an account to Alfred at his settlement — about that there was little I could say — except as to why *no* mention at all was made of the subsequent proceedings by which the issue had been previously judicially resolved

— or as to why the Law Complaints Officer made no reference at all to either her or the other solicitors prior involvement in the matter whatsoever, and pretended that the Law Complaints Officer had not even known about that aspect of the matter. I treated the SAT to a full history of what had transpired other than as disclosed by the LCO, by way of defence to this second charge. I don't think that anyone really wanted to know.

The third charge was less specific and a general whinge about my having at various times and in various manners interfered with and disrupted due process of law in matters before the District Court. Much was made of certain events, referred to without context, and context was put with other facts of total irrelevance to them. It was a smeary, bleary sort of charge, loose and apparently careless — but it seemed to adequately cover just about all the major areas in the conducted Court proceedings where these former solicitors could be considered at risk of a professional misconduct claim, and nothing I could do would persuade the LCO to clarify or to particularize all or any part of it.

It seemed to me that the Law Complaints Officer was being somewhat perverse concerning the relationship as between the Courts and the SAT which after all, is not a court of law and is only an administrative body. The matter of my bill of costs had in fact been

determined by a Court, in early 2003, and I was in fact awarded by the Court a sum of money in respect of it. Prior to that, the Law Complaints Officer had made it clear that such a minor oversight on my part was effectively "cured" by my agreeing to render to the client a currently dated bill of costs — I cannot see that this charge before the SAT was anything more than "padding" for the other charges, to give some connection to Alfred's matters, and certainly my "oversight" was not considered by the Court to be of consequence in its eventual determination.

Whereas the circumstances by which Alfred had come to find himself liable to pay this increased bill, would in the opinion of most appear to have been more in need of professional regulation and scrutiny. With the third charge, it was not permitted to query the legality of the Plaintiff's retainers in the context of the complaints made against me. The SAT assumed a presumption of legitimacy which is not supported by case law — the onus is always upon a solicitor to demonstrate that he has conducted his retainers properly. As the Court did not see fit to intervene — this duty then fell to the Law Complaints Officer — she never even asked any of them to respond at all to any of the issues raised.

Indeed, so serious were the issues arising from professional

misconduct of the summary judgment application in the action of 2003, and otherwise concerning that case, that in order to cover these issues the LCO had clearly deemed it prudent not to make any enquiry whatsoever of the other solicitors, and to simply issue a further and separate charge against me to cover those "issues".

And so, as surely as night follows day — allegations and innuendo again rose up, in the context of charge number four. I had revealed documents, breached client confidentiality and indeed had acted with total disregard and abandonment where the rights and interests of my former client Alfred were involved it was pleaded with great concern.

Having thus managed the issues concerning the conduct of Alfred's legal matters, the fifth charge then proceeded to deal with the Judge — to whom I had been both discourteous and rude, which charge conveniently left the entire issue of the conduct of the Commissioner at the hearing of December 2004 completely out of the spotlight.

No document or context was provided to indicate the precise manner in which or to even suggest possible reasons why this most terrible outrage had occurred. This solicitor had upset this Judge no end and so must be punished the LCO demanded — to the full extent of the

law.

That left only the bill of costs that I had, as at the end of 2005, issued to the client, as the sixth and final charge. It had been filed with the Court but listings were busy and slow — the hearing in the SAT took place before the Court had had any opportunity to even look at it, much less to deal with the issues arising from it.

After I was originally served with these applications, there followed a series of directions hearings before the SAT. It soon became apparent to me in what direction we were heading.

The LCO was still in the middle, or approximately the middle of filing her vast and voluminous and entirely disordered books of documents and pleadings when the date arrived that I was supposed to be filing my response. so I complained to the SAT that the Applicant had still not closed the pleadings. I was given an extension of time — of one day — to file my response and otherwise was told that I had to file my response notwithstanding.

When filing my response with the SAT, I said to the clerk — its not much but the best I can do — the applications are all in disorder — I really don't know what to do with them at all. "Oh", said the clerk " I wouldn't worry too much — the Complaints Officer is always bringing in applications that are in an absolute mess — she expects us to sort it all

out for her at the hearing." I was not re-assured.

Then I asked for particulars of claims — in some detail on every charge. Nine out of ten responses to my requests stated the particulars to be as pleaded, the other deemed the enquiry to be entirely irrelevant to the issue involved.

Thus settled down, by the sheer inertia of both the SAT and the Law Complaints Officer, in all respects, the matter then proceeded for listing — three days were allowed — when I wanted three weeks — but apparently that was unheard of. The SAT had every confidence that whatever the issues were they would and could be all sorted out in the course of a three day hearing.

6 June 2006 was the first day for the now listed SAT hearing. Which did not deter the LCO from delivering to me, a few days prior, some supplementary books of pleading — I noted two of them to be of enormous size — in fact far larger in volume than the original books that they were intended to "supplement". I was less than impressed and very not happy.

I was told that the same counsel who had assisted the LCO in the preparation of the pleadings would also appear at the hearing. I was told that both Alfred and the new solicitor would be giving evidence for the Applicant at the hearing — and that if I had any concerns about

issues relating to my client — well, I could simply cross-examine him. Having already been told at an earlier directions hearing that the SAT was not concerned with any issues relating to the conduct of other solicitors, only as presented against me, I considered the proceeding to be somewhat contrived and entirely directed against me. Whereas I had received "clearances" in respect of the other alleged "complaints" I was not expecting that outcome here. Properly conducted, these charges against me would not be proceeding at all, unless and until my complaints as against the other solicitors had been investigated and determined. I was told by several people — if the Law Complaints Officer hadn't elected to investigate their conduct by now then the indication was that she never would.

On the morning of the hearing, I knew that I could not bring myself to attend. I decided that it would be better to just let the proceeding take its course and await the findings of the SAT. Whatever evidence was given, would simply go down on the record — without any interference from me.

CHAPTER NINETEEN

In fairness to the SAT, they did try and contact me on the morning of the hearing. They telephoned me at my home but when I was told it was them, I merely disconnected the call. Evidently, no one was wanting to be making or relying upon any affidavits of due service upon me of the notice of the hearing.

I received no further call but a fax came through late in the afternoon which in fact could not be read — somehow there was superimposed right over the letter some sort of advertisement for one to take a holiday somewhere overseas, and I asked for a better copy. It was sent out the next day. By then I had already spoken to a new player in the game — the Secretary of the Board. Evidently, she had been notified of the orders made and she was almost hysterical in her glee.

"You have been suspended from practice", she said "and you must not act as a solicitor any more otherwise you will be in contempt and may be placed in prison".

"Very well", I said, "so what am I to do — about my files, about the books and when clients contact me?"

"What do you mean", she said "that clients are still calling you — orders were made yesterday — they should be calling me". I pointed

out to her that as no headlines had appeared in the papers so as inform the wider world of this monumental event, most likely none of my clients actually realized that I had been suspended yet, and so would still be calling me.

"Well", she said, "you must tell all of your clients that you are suspended from practice, that the Legal Practice Board has taken control of your files and that they have to contact me."

I said that I would do no such thing — if they had suspended me from practice, presumably, as with any other form of involuntary process, there would be process and procedure in place by which they would both manage and control the further conduct of my business. But it seemed that they didn't actually have a system in place — apparently it was up to me to sort it out for them. Then later in the morning I was told that they would be having a meeting about it and probably appoint someone as an interim supervisor of my practice. I told them to have such person contact me just as soon as he was appointed. I decided to make myself available to the clients until the issue was sorted out but that I would not do any further legal work as being in breach of the orders. As such I told anyone who rang that I was having a few troubles with the Board but that they would soon be in contact with them.

Two days later, I was "served" by solicitors, appointed to act for

the Board with a letter and an application to the SAT seeking orders on behalf of the Board that it be empowered to appoint a trust account supervisor to my practice, on the basis that the SAT had just previously suspended me from practice. It occurred to me that it should have been the LCO herself, having obtained orders on 6 June 2006, who should have then been making any necessary application to the SAT for any "consequential" orders following on from her conduct of the complaints procedure against me.

The application was in fact made by the Board. It raised the issue of why the Board was appearing before the SAT, to obtain orders that it be enabled to appoint a supervisor to my trust account when in fact the Board already had that power in terms of the Act. It also raised the issue as to why the Board was only making such a limited application to the SAT anyway, when it was a general supervisor to my practice that was required to be appointed by the Board, by reason of my suspension from practice.

I suppose that such overkill on the part of the Board in applying for further supportive orders from the SAT when it already had power in terms of the Act to simply proceed, in terms of the earlier SAT orders, on its own initiative, could be seen by some as being merely an excess of caution on its part and prudent legal practice.

Indeed, once the Board had obtained such "orders" from the SAT, there would in future be no need or in fact capacity for anyone to look into the matter further — orders would have been made, and, except by way of a further application — or appeal — that would be the end of any issue arising.

Due process entitled me to have been served with the application and given an opportunity of reply, and indeed I was. Together with the letter and the application was provided the SAT "reasons for judgment" — orders in favour of the applicant had in fact been made the previous day, without notice to me — and the SAT had graciously granted to me "liberty to apply" — which meant that I was free to re-list the application if I was not happy with the decision made. I noted that costs orders against me had been neither sought or granted — indeed, I doubt that any work entitling the solicitors to be remunerated for legal input into the matter had been done at all. The LCO had on 6 June 2006 obtained her orders, and on 8 June 2006 the Board obtained theirs. When asked by the SAT as to the basis for the application the then solicitor appearing for the Board was entirely lucid and clear. "Well", he said, " I suppose this application really just follows on from the one on 6 June 2006 — pretty much as day follows night" — or perhaps it was as night follows day.

Upon being thus "served", I contacted the solicitors for the Board. If I was required in law to be a party to the action, then I was entitled to have been a priori served, and why had this not occurred.

But that minor issue had been covered. The Board solicitors had done their very best to inform me of the application — indeed they had been trying to fax me all day before the hearing — but the fax just would not go through.

My fax was on all day so how had this occurred. Well, the Secretary of the Board had made a mistake — she got it muddled up — somehow, and in spite of the most exhaustive efforts on the part of the Board in late 2005, to ensure that they had a complete record of all of my new contact details, both personally and for the practice — she had given to these solicitors the fax number — long since disconnected — of my former office.

The careless confusion of these people continued for over two more years.

It struck me as funny that nothing ever went astray, got lost or completely forgotten about which they saw as being assisting to their purpose — but that otherwise most things got lost, mixed or muddled up — or discarded along the way. Indeed, if I had not been fairly vigilant and answered to every event, most of the historical record in this matter

would just have been cut off and discontinued with — leaving only a trail of paperwork supportive and re-enforcing of their appropriation of my practice.

So, having obtained these orders "ex parte" — the Board had to find a supervisor.

"We are doing our best to find one" said the Secretary -"you will just have to be patient".

Well, I was patient until the 14 June 2006 and then received a telephone call from the Board — I was to contact a certain person — who it was expected that I would be able to come to some arrangement with concerning the interim conduct of my practice until further orders were made. He came out to my house the next day.

We reached an agreement that his interim supervision of me would be absolutely minimal and that I would effectively continue to conduct my practice as before until further orders were made. By way of record, we both signed a short memo of this arrangement that I wrote out by hand before he left that meeting.

But by the next day, apparently he had been at another meeting, with the Board, and so, pretending that our earlier agreement had never been made, he wrote a very long letter to me, saying how terrible was my conduct, in having been suspended, and that he was now fully

empowered to take over and deal with all of my trust account, had sent a copy of the most recent order, to the practice Bank, and that I now had to hand over to him — all the practice files. So, I said, no worries — come and get them — just as soon as you can find the time. He never even called me back.

Next thing I knew, I was being served at about 6.00pm that evening, with an application for contempt — in the Supreme Court. I had to appear the next day — or risk orders being made that I would be committed to Bandyup Prison.

So, I thought that I had better go along and see what it was all about.

Well, it was clear from the papers filed by the Board — as served the evening before and some more for good measure, served as I walked in the Courtroom door that since 6 June 2006, I had been objecting, obstructing and hindering this duly appointed supervisor in the lawful conduct of his duties. This not having exactly been the case, I asked the Judge for an adjournment — I asked for time to reply. But, no! So evil had been my conduct that the matter could not wait — it was in the public interest that orders be made right now. So it happened that the orders actually made, in relation to the application were not for contempt at all — in fact, they were simply orders that the supervisor

being fully empowered by order and the law to take and seize my practice files — I was to deliver them up to him forthwith — or be brought back to the Court for further hearing to be dealt with for contempt. I thought the orders made were fairly clear but the Judge seemed very concerned to ensure that the orders were clear — you must, he said, deliver the files — otherwise you will be incarcerated in Bandyup Prison under further order is made.

I was a bit worried by that, as you might be, with a mortgage and family at home, so I told the attending solicitor that I would go straight home from the Court and that I would wait for a call from this supervisor so that file delivery could be organized.

I waited all afternoon — I had hundreds of client files, and the Court had directed that an inventory of the files taken be conducted — it was not just a matter of packing up a few boxes, putting them in a ute and carrying them up his stairs.

By evening, I thought that most likely they were preparing some story even now that I had been further objecting and wanted to put me in jail, so I did collect up all of my then current files, and decided that the best place to take them, so that there could be no confusion or denial regarding the delivery, was to the Law Complaints Office in the city. I provided a list of contents, the contents were briefly examined and I

received a delivery receipt.

Letters were then written to me by both the Board and the supervisor to confirm that they had these documents. I asked what I was to do about the other files — and received no response to that whatsoever.

Meanwhile, the Board was proceeding with an application to the Supreme Court for the intended purpose of having me struck from the Roll as a legal practitioner.

Whilst I was aware that this was in progress, I decided to wait and see the content of the application made before attempting to resist what I now considered to be an inevitable process.

For the purposes of making an application to the Supreme Court both the SAT and the Legal Practice Board were to provide input — the SAT had to deliver to the Court its reasons for decision and the Board had to consider, from its reading of that decision and in regard to all of the circumstances what position should be taken in the matter. I wrote to the Board advising them that a review should be conducted of the relevant files whilst I was still only suspended on an interim basis. The Law Complaints Officer responded that I appeared to be somewhat mistaken in my understanding of the current position — her only intention at that time was to proceed with all speed to have my practice

"wound up" — having had findings made against me of such a serious nature in the SAT I was told that this outcome would be inevitable.

I was served with the Supreme Court application listed for 1 September 2008 some three months after the SAT proceedings.

I was advised by the SAT that the Board usually proceeded immediately to an application to have the practitioner struck off, following a suspension. I was again reminded of an opportunity to take advice from one or other of the panel solicitors, and it did appear that there could be a possibility of "negotiating" my way out of this by such means. I considered trying to retain the joy and comfort of remaining in the profession, but it just did not appeal to me. I could waste a lot of time and money on an unsuccessful application. I knew that even if successful — the terms of my re-admission to practice would be onerous and the prospect of the Law Complaints Officer hanging like a millstone round my neck, examining files and issuing complaints on a randomly continuous basis for the duration of my remaining career did nothing to encourage me in that direction.

In fact, and for good measure this complaints officer had been chasing me up with two other professional conduct complaints, as I was given to understand — as back-up in case something had gone wrong in the course of her present applications. As soon as this application

proceeded to me being struck off — both of those other complaint proceedings before the SAT were wholly and completely withdrawn. So as to justify their not proceeding, I was made to "consent" to the applications being so withdrawn — in fact, each of them should properly have been proceeded with.

One was only a somewhat manipulated "technical" offence, and I suspected the client involved to have acted in some collusion with regard to the matter with the investigating Law Officer. At least in that case, it hadn't gone on for so long nor was it at all complex — I put before the SAT the entire file content by way of my defence. It showed up some of the "tricks of the trade" by which the Law Complaints Officer was then proceeding to bring and obtain some amazing and rewarding "results" in her applications before the SAT.

The other complaint that was initiated and then stopped by consent was of a slightly different nature. In that case yet another solicitor had been, for a period of some two years, at the total expense of our respective clients, trying to cover up and avoid dealing with the fact, that in a relatively simple building dispute — he had in fact sued the wrong Defendant. At the time when he decided to complain about me he was just about to start a third summary judgment application in the Local Court. He had walked right over the law and my client in the

first application because my client had then been representing himself. We appealed and set that aside and advised the Plaintiff as to the correct Defendant. Instead of admitting to the error, and dealing with it — this lawyer simply took the matter under his control and kept making further and accusatory affidavits that, even if he had sued the wrong Defendant, which he did not admit, this was only because my client had lied and caused this situation to occur. Needless to say, the Law Complaints Officer did not see fit to intervene.

During two years of vagrant "applications", clearly made without any instructions and in maintenance of improper suit, I twice made entirely proper communication with his client in an attempt to sort it out. He was so angry that he even got his client to join with him in the making of the complaints.

He was outraged when in the course of his complaint, I did, in my defense raise the issue of his actual and continuing misconduct in the matter. Having sent to the Law Complaints Officer around 60 pages of documents to support my position, she did at least test the water by actually sending them to this lawyer, not exactly requiring a response — but perhaps he might like to comment.

Well, he did indeed respond — why did he have to respond to me, in the context of his complaint — he didn't have to answer to me —

I was the one complained about.

The Law Complaints Officer had better get on with her job of investigating his complaint. Whilst he did not see fit to answer to me, he did mention however, that if it was the case that the Committee wanted him to answer — well, that was a different matter — to the Committee he would provide a response — if he was so directed. I advised the Law Complaints Officer that I did require the matter to go before the Committee for its consideration.

Now all professional complaints are defamatory in that they imply incapacity concerning a persons professional and business conduct. The Act states quite clearly that no action by way of defamation shall proceed in the context of sorting out professional conduct complaints. It is an offence to commence any such proceeding as being against the Act.

So, it came as no surprise to receive from this solicitor a letter directly stating that my complaint concerning his conduct was most defamatory of him — that he would be defamed if my allegations were read by the Committee. If I didn't withdraw them straight away, he would sue me for defamation.

. Funnily enough, the new solicitors for Alfred had, when I told them that they should not continue to act for him once they had become

more informed about the situation responded to me that they had not liked the tone of my letter, as calling them dishonest. If I did not withdraw this allegation of dishonesty against them forthwith, then they most definitely might proceed to get instructions to sue me for defamation.

So, I did not exactly feel overly threatened by this second example of what clearly the Law Complaints Officer not see to be evidence of the bullying tactics used freely in the profession — merely an indication that yet another of her witches brew complaint matters was bubbling along quite nicely.

So, perhaps it can be understood that with the ongoing matter of complaint proceeding as it was, I didn't see any point in arguing to have the real issues in these two "follower" complaints proceeded with. I did however consider it appropriate to ask, as the Complaints Officer had chosen to discontinue -about my entitlement to costs. Not very much, but something at least. The SAT was most helpful — they advised of similar cases in which respondents had sought costs and one in particular set out the principles in full. The respondent had made due application for his costs I was informed — but he didn't get them.

Well, I really had enough on my plate at that time without getting myself caught up in any further principles of law. Indeed, I was still

waiting to be served with the strike out application, and the trust account inspector had been onto me again. Now that I was suspended, and notwithstanding the appointment of the practice supervisor, it seemed that I needed to be getting my trust account in order, as it was still alleged to be in something of disorder so I made arrangements with the bookkeeper so that these problems could be fixed, before sending it off for the audit, due as at end of the previous March. Although I made the arrangement, we were told not proceed with the work until advised — so, although I had agreed a fee with the bookkeeper to do the work, my books remained at the bookkeepers. I was unable to lodge income tax returns until the trust account was sorted out. Although the business was still mine in name — effectively the Board had straddled itself aboard — they didn't do anything, I couldn't do anything — they seemed content with that position — waiting apparently for the outcome in September of the Supreme Court striking off proceeding. Perhaps if they had spent the time reviewing the law and finding out that it was in fact their duty to review the SAT applications and thereafter make an application to and assist the Supreme Court in making appropriate orders consequential upon the outcome of the SAT proceedings, as conducted by the Law Complaints Officer and her assisting counsel, the public interest would have been far better served.

Instead, I was merely kept in a holding position. Apparently, a practice had grown up that it was always the Law Complaints Officer who proceeded with the applications to the Supreme Court to follow up her applications to the SAT, leaving no scope in the particular circumstances of this case, for the independent review of her misconduct by the Board, which is clearly provided for and contemplated by the Act.

CHAPTER TWENTY

The first thing I noticed about the Supreme Court application was that it had not been made by the Board at all but in the name of the Committee by the Law Complaints Officer. This annoyed me because although in all the circumstances the process of review by the Board of the SAT findings may be entirely illusory, still this intermediate process had been denied me.

Secondly, it appeared that a further order had been sought at the SAT hearing which I understood to have been applied for at fairly short notice, the relevant documentation having only come into existence during the course of the conduct of the SAT hearing and not in fact finalized until after findings against me had been finally handed down.

It was in fact a little deed of settlement — of the Law Complaint Officer's own making and design.

By its terms, both Alfred and his new solicitor had somewhat unilaterally "agreed" with me to accept, in full and final settlement of their respective entitlement to further legal costs from me, in relation to the matter, a somewhat token sum of around \$1,500 each.

Subject of course to, and only if, the Court saw fit to make the order.

Goodness me — if the findings of my improper interference in

the District Court process were true then I must owe Alfred at least all of his solicitors costs in that regard — even the SAT had noted around \$7,000 of them and there were clearly more that would have needed to be considered prior to anyone entering into such a deed upon a voluntary basis.

Upon my further enquiry as to how this instrument of law had come to have been made — an eerie silence fell. No-one really knew who had drafted it, procured its signing — indeed it simply seemed to be something that had just "happened".

But in adding this deed to her list of "requirements" of the SAT, the LCO had overstepped the mark. No-one apparently could think of a way to get around the law which clearly said — that the SAT could, as against a practitioner make orders either suspending them or impose a financial penalty — both not both. So this orphan deed of meddling had simply been picked with the papers and taken off to the Supreme Court to be dealt with by them.

So, I filed a notice of objection in the Supreme Court, protesting that the Committee was not a proper party to the Application, and that it should not proceed.

I elected not to attend the hearing as I was somewhat fearful that once inside that Court again, on some basis or another, I might find

myself detained, constrained and possibly never seen or heard of again — and that was long before the case of Mallard had even come to the light of public review.

Funnily enough, it was the same Judge who had conduct of that matter as had conduct of the hearing against me — with two other judges there to concur.

He speedily dealt with my objection — of course, he said, the Interpretation Act applies — anyone can do anything really, as long as they consider it reasonably necessary as an extension of their powers.

It struck me that in future it would be far easier for all concerned if they all simply acted in the name of Water Board, instead of Practice Board/Committee.

Then they would be entitled to enter my house by passage through pipes and drains and to have process servers emerge from the loo so as to enhance their chances of service.

And the learned Judge then proceeded to a striking off order with the full power and majesty of the law. "It's disgraceful", he said, "what this practitioner has done. She must be struck from the Roll. She has made applications that are completely out of order — and been extremely rude to a Judge".

"Indeed, it is very plain to see that the public must be protected,

from her applications" and so saying, he ordered that I be struck from the Roll.

As for the by-blow order, in a sum too trivial that a judge of supreme importance be expected to address *his* mind to its purport or intent, he made that order too. The other two judges concurred with his reasoning, and costs were again awarded against me.

Well, once they got their orders, it was like the hounds were back and baying at my heels again.

I was struck off the Roll on 1 September 2006 and by late September, it had suddenly dawned upon the Board that the few client files that I had delivered back in June to the Committee, under some duress, did not in fact comprise my entire client base.

The prior contempt proceedings, which had been earlier just left adjourned, were put back on again. I was again to be dealt with by the Court for contempt, but this time the sub-text had changed. Now my contempt was that I had hindered and obstructed the supervisor by refusing to re-deliver the balance of my files.

At the same time, this supervisor, who had been appointed by the Board to conduct my trust account, used the Supreme Court order to have my bank send to him all of the balance in the practice trust account.

I think that if the truth was known he would have preferred not to have been involved, but I don't suppose that he was given much option — with a senior partner of his firm elected to the Board.

The previous telephone conversations in which I had spoken to both the Board Secretary and the Supervisor as to when they wanted the files were reversed into frantic enquiries of me on their part as to whether or not they had yet received all of my client files. You would think that they would have known that, by the use of visual aids, but no! By some confusion of events, the supervisor thought that I had in fact delivered all the files to the Committee but that they had only sent the urgent ones to him and they in turn thought that I must have sent the remaining files to the supervisor. My obstruction in the matter was clearly plain to see — and it was entirely my fault that it was not until now that they had realized the extent of my contempt — I had to deliver the files straight away — or be punished further.

This time, I made sure that I had arranged file delivery well before the hearing took place, service having been effected quite properly this time by chance, it gave me the opportunity to do this.

It was now October and at that point, apart from outstanding and potential costs orders and the matter of getting the trust account and the practice books finalized, there was nothing further to be done.

CHAPTER TWENTY-ONE

October 2006 — and they started to come down on me for their costs like cats and dogs in a heavy shower, with demanding letters in the strongest of terms.

I think that the new solicitor was expecting that I didn't have money to pay him a sum of around \$15,000 so he proceeded to value my house and the sheriff indicated that with the extended time for enforcement, as and when instructed he would proceed.

It should not really have got to that stage, because an extremely dodgy looking "affidavit" had been presented by the new solicitor to the Court to support the application for extended time. An old search of my land — about 10 years out of date, was attached to the affidavit — and for good measure — the entire roadway leading to my house had been coloured in — my land was annexed to the Crown, and the Crown land was annexed to mine.

"What child has scribbled on this legal document and what place has it in an affidavit" I asked of the LCO, and as usual, she declined to answer, would not intervene and let the application slide through the District Court — this time I didn't even bother to inform the Chief Justice or raise my concerns with the Sheriff. As previously, orders had been made.

So, my land was thus marked for sequestration and a mighty long time in DOLA while the boundary issues might be "sorted out".

Anyone who does not have, as I have said before, that certain something that can open any door, would have found themselves simply required to go away, and make a proper affidavit. In presenting such an application to the Court — however it seemed that this new solicitor could do no wrong — whatever he wanted, he got it.

The Court gave him permission to sell up my land to cover the orders made in December 2004, the same orders that I had rudely complained about to the Chief Justice — the same rudeness that I had recently been struck from the Rolls in respect of, and concerning an application that this solicitor had "defended" when by law he had no right to have been there at all.

Thus and upon the basis of such process was my land to be sold.

Because aged care work is not remunerated at very high rate, and I still had to support a family and continuing studies, I decided to re-finance my house so as to both pay them off and continue with some kind of living existence.

The financiers from the Eastern States were quite amused in fact — we worry about WA they said — we worry. But I told them that I had

a strong Protestant work ethic enshrined upon my character and in 35 years had never gone broke, despite many provocations, and would they please support me at that time.

I think they regarded me as being something of a nutcase, but the financials stood up and the loan was approved, and then obtusely the new solicitor would not attend the settlement to be paid. He fussed and farted around. Eventually, I had to go to the Sheriff and pay him, to get the release I needed.

It took three goes before he got the papers right. Twice, if I had not checked, I would have gone charging out to Midland with incorrect documentation (so don't anyone blame him — he did his best).

I watched at DOLA as the clerk, upon my having followed his instructions in the preparation of documents to the letter, removed the seizures from my land on his computer screen. Next day my "settlement" was in an uproar, because of the orders still on my land.

"I took them off myself", I said, "yesterday they went — do a search, be satisfied — and put on settlement".

In the relative calm, after the storm, I advised the Law Complaints Officer that I could not proceed with any appeal unless and until she proceeded with her enquiry and there had been a determination from the Committee concerning the conduct of the other

solicitors about whom I had made complaint, a complaint now outstanding since December of 2004.

You can most certainly drag a horse to the water — but you cannot make it drink.

Ms Trebor-Smint was allotted the task of grinding me down to a pulp. I don't understand the complaint at all — could you kindly explain what you mean. I told her that the case really was quite simple — in breach of section 126 these lawyers had acted, effectively as agents for Kenneth and the other solicitor, against the interests of the notional "client", and so as to avoid their original conduct as against the client being subjected to proper scrutiny.

I wanted an enquiry proceeded. Well, it couldn't happen at that time without a lot more people, and some of them quite influential, possibly getting into trouble, so the intrepid Trebor-Smint was first promoted to Senior Officer Trebor-Smint and then encouraged to use the very best of her wit and repartee to ensure that the complaint was determined — adversely to me.

After much ado about nothing, the complaint was finally put before the Committee.

By that time, I had told Smint that I wanted her to add the Law Complaints Officer to the list of practitioners complained of due to the

by then considerable evidence of her complicity with and support of these other lawyers in their misconduct of the law.

I received a letter from Smint — my complaint was about to be put to the Committee. She had done her best to put something together, even though she didn't understand it and had had no input from me. In fairness to me she reported — I have told the Committee that I may have misunderstood your complaint, but I noticed that the LCO had been excluded from the list.

I received a further letter from Smint, in early 2007, saying that the Committee had now investigated my complaint and proceeded to its determination — and as against each and every legal practitioner about whose conduct I had made complaint, they dismissed my complaints entirely, said they had done nothing wrong, and for good measure, ordered that none of the solicitors was to be required to answer for their conduct. No findings were made, and by some quirk of law — that means that there is nothing further that a complainant can do — just a little loophole in the law — and something of a haven for those in the profession who have nowhere else to go.

Evidently, the Board had been awaiting the outcome of this "finding", because as soon as it had been made, in early 2007, I was again before the Court — and in contempt again!

This time, I had been refusing to hand over to the Trust Account Inspector all of the books and the trust account records.

The real story of what happened concerning my trust account was a bit of an embarrassment to Board — hence the "contempt" application.

First the Trust Inspector had looked at the books, then she had taken them away, in early 2006. She said that they were in error and that the entire account might be overdrawn by about \$1,000. The books were returned to me to be sorted out by me at my expense. I had to find a new auditor. The auditor that I previously used had been somewhat severely latched onto by the Board, because of his "connection" with me and I think that they completely wore him down as well — not that he had done anything wrong — merely to discredit him. We decided it would be better for me to go and get a new auditor, and he suggested that I take the books to a bookkeeper first if they were supposed to be so disordered.

So I took the books to a bookkeeper. We later agreed a fee for the completion of the books, but this having been arranged, I was then told by the Trust Auditor from the Board to wait for their further direction. All that they clearly intended was to retain "control" of the books but out of their possession. And so, nothing was allowed to happen during

2006, until I had been firmly struck from the Roll. Then, the Secretary of the Board wrote to me — send the trust books back to us — we will now complete them at our expense.

So, all of the books that were with the bookkeeper were delivered back to the Board at the end of 2006.

But, of course, they didn't want to actually do the work — they only wanted the matter finished.

So, in early 2007, both the supervisor and the Trust Account Inspector wrote to me telling that the trust account and the general papers they had taken were available for my collection — I was to inform them forthwith of an address to which they could send the books for delivery to me.

Well, by chance I knew that they could not have done the books. It had not been intended on my part, but the few transactions that I had conducted as between February and June of 2006, had never got delivered to the bookkeeper — in fact he had never even started on the agreed work at all before we had to return the books to the Board. I had put them all in an envelope and they had subsided under the ever increasing pile of papers dealing with this "matter" that occupied an entire small room in my house. I called it my "study" and it was around this "black hole" that my entire life now revolved. Give in or give up for

one minute and it would devour you — try to get away and it would call you back with at least a weekly letter from one or other of them — demanding of response or they would make trouble for you for refusal.

That I was able to maintain this necessary "separation" from it was the only thing that saved me from being absorbed into, and ultimately destroyed by, this maelstrom of their illegal activities, Mentally and physically I could close the door on it, but only when and after I had done what needed to be done to maintain orbit around it — a sort of satellite that they couldn't bring down — but nor could I get away.

So, I confronted both of them with the fact that they only intended to sent me the books back, totally unprocessed, and in breach of the Boards undertaking.

I asked to see the reconciliations before I was required to accept the return of the books. The silence was deafening.

By this time, I had in fact written to several government agencies, such as "fair trading" but apparently this law was only for the plebs — to deal with and be dealt with by — these others that I was enforced to be dealing with were not covered at all by any "common" law, and I was it seemed somewhere out there on my own.

After the silence from the Board, suddenly I received more correspondence.

Evidently, the Trust Account Inspector had been made to do the books and now, entirely forgetting that only a few weeks before, I had been impeding the return of the books by refusing to accept delivery, I was now impeding the Board by reason that I had not supplied to them all of the books that they needed.

I was to deliver these further books forthwith or else — the contempt proceeding would be put on again.

This time I decided to remove the books to a third party, in fact the only government agency which had agreed to even look into the matter — the Office of the Ombudsman, to be held pending the outcome of their enquiry.

I awaited the outcome of the inevitable contempt application. Affidavits which made no mention of the earlier events, merely ranted and raved that I had refused these further books to the Board — and that yet again, I needed to be dealt with for contempt.

This time I had an option — deliver the books or file an affidavit as to why I would not. Well, I didn't see much point in filing material to support this improperly made application — I simply told them that they were with the Ombudsman's Office.

Well, events moved fairly swiftly after that. The Ombudsman decided it prudent to send the books back to me, so that they could be

given to the solicitors for the Board, and informed me that although my provision of the entire 7 years of history complaint, in copy original form had been interesting to read — well, really they were busy and had other things to do — thank you for your time and interest — the file was closed.

Meanwhile, not having really expected the Ombudsman to do much (but you never never know if you never even go!) I had written again to the Law Complaints Officer, who I now tended to visualise as something of a huntsman spider, that you can still hear scuttling around in the roof, even when they are not actively in pursuit of their prey.

I told her that even through, at the instigation of Senior Law Officer Smint, the Committee had determined that Alfred had consented to all of the conduct, that this did not cover at all the issue as to whether or not such consent had been obtained by undue influence or pressure — and this issue I now required to be determined as a further and entirely separate matter.

I also made several complaints concerning the conduct of the practice supervisor, and in particular his intermeddling with two estates. Determined to close them down, to the disadvantage of beneficiaries — he first said that I was unfit to be an executor by reason of my then suspension, then fiddled around to try and finish them up — and then

wanted me back again as "executor" to sign the resultant documents that he had thereby obtained. He huffed and puffed and moaned — what was my problem with signing he said. I could handle the bullying and the pressure but what really annoyed me most in all of this was the manner in which he not only demanded compliance but demanded my approval of his misconduct too.

The Board then said that all of the money in the trust account had to be dispersed, back to its rightful owners, who by then had each been dispossessed of their money since June of 2006. I said that they could send my money to me and certainly send out the money to my clients — but that I did not want them to use it as yet another gratuitous opportunity for them further to defame me — I wanted to see before they were sent, the letters that they would send out with the cheques. I suggested that Law Mutual might be a convenient arbiter of what should be put in such letters. As far as I know, the Board still has this money, as not sent any of it out to anyone as yet, and I certainly have not seen any draft letters.

The LCO had not expected a further complaint regarding Alfred's matters, which she thought that Smint had finished off for her, in early 2007, so she simply refused, as between May and December of 2007 to answer to or deal with that further complaint at all.

By the end of 2007, the Board had a total of three applications to the Supreme Court with costs awarded against me upon the basis of my assumed "contempts", there was no further mention of the costs awarded in the actual SAT proceedings of June 2006 — those costs had been awarded to the Complaints Committee, but, as I came to discover — the LPCC is merely a division of the Legal Practice Board and has no independent legal status. Whereas most people probably pay to them their legal costs to avoid the risk of further enforcement — in fact, it is the Legal Practice Board which must legally make enforcement — the costs awarded against me by the SAT arising out of the June 2006 proceedings were \$15,500. I was told by the Law Complaints Officer that if I paid this amount voluntarily, then she would not seek further costs against me. I told them that I would not pay up on these unlawfully obtained orders, and noted that the Law Complaints Officer still had not proceeded with my further complaints concerning duress and undue influence where my former client Alfred was concerned, nor had she looked at my complaints against the practice supervisor.

So it was that a few days before Christmas of the year 2007, and totally out of the blue — I received two letters from the Law Complaints Officer – written by a law officer on her behalf.

CHAPTER TWENTY-TWO

The Law Complaints Officer wrote me two letters — one saying that the Committee had met on Alfred's complaint and resolved it, that as that matter was already finalized, that there was nothing to deal with at all, and for good measure the Law Complaints Officer was expressly directed, by the Committee, not to communicate further with me in the matter ever again. As a further precaution, the file reference at the top of the page was that of the complaints that I had made against the practice supervisor.

The second letter appeared with the same file reference, and indeed this one did deal with the issues concerning the practice supervisor. Well, they could hardly deny that he had been, without first appointing himself as Executor, intermeddling in the estates, but of course, he was a practice supervisor and so his conduct was not at all improper. As a further precaution, the Committee declared that in all further estate matters, I was to make contact with the Board direct. By way of a further example of that earlier "denial of the denial" by which Committee process kept unwanted material at bay — I had complained that the practice supervisor had not only seized upon my trust account, but that he had also, as trustee in possession of the practice —

conducted certain files to my intended disadvantage and taken fees for his trouble, by his own admission.

By mid- 2007, the ATO was beginning to wonder, as they might, precisely who was going to be filing GST and tax returns on behalf of my former practice as from 6 June 2006. The practice supervisor wouldn't, I simply couldn't and it was me the ATO were after as responsible to file the returns.

They sent me a penalty notice, for the late lodgements with a fine of \$550. I was so exasperated by then with the practice supervisor that I demanded that he declare whether he intended to be lodging returns, or provide to me the accounting so that I could lodge them myself.

Naturally, he did not reply to me — only to the ATO, in order to be "helpful" He didn't think he said, that he had to do anything where the GST and practice accounts were concerned, and that if indeed, I did require his assistance in that regard, in any way at all, then all I needed to do was to tell him more precisely exactly what it was he should be doing — and then of course, he would be only too happy to do it. In any case, he stated that he had only finished off for me a few outstanding wills. No more than \$170 of trust moneys had been received by him on account of this practice he told the ATO — which led one to speculate somewhat as to what his actual intention had been concerning the

funds from my practice trust account which he had somewhat gleefully, back in late 2006, informed me that he had now taken from my bank and placed in his own trust account.

I had asked the Law Complaints Officer to conduct an enquiry into this aspect of the matter, and in terms of her correspondence to me of December 2007 — she had certainly dealt with the issue.

The practice supervisor had written an entirely proper letter to the ATO, the Committee had determined — his only intention had been to try and waive on my behalf an incipient "penalty" that the ATO was considering imposing on me, arising out of my failure to make due lodgement of the relevant returns. Whilst I doubted that his concerns regarding eventual "responsibility" for such a fine, were at all on my behalf, that aspect of his correspondence was apparently the one and only issue that the Committee, as directed in the matter by the Law Complaints Officer either needed or wanted to see.

The entire issue of the discrepancy of several thousand dollars of accounting to the ATO, the actual subject of my complaint was somehow "overlooked" — yet the relevant letters had now been the subject of a Committee determination, and no adverse finding made as against the supervisor of my practice, regarding the trust account.

Whilst the Committee had determined to find nothing out of order

— it directed that in future I was to deal with the Board.

Shortly afterwards, the Board sent me the trust accounting records and the practice books — there was no reconciliation provided, just the books.

After some delay, I was sent a check for something less than a thousand dollars as being moneys due to me from my trust account. Of the original allegation that there had been a shortfall in my trust account of around a thousand dollars, funnily enough — no further mention was ever made.

Evidently, by means of these Committee determinations (if either in fact really occurred) the Law Complaints Officer clearly considered that she had, as at the end of the year 2007, at least her satisfaction now completed her retainer and had closed the matter down. Very likely, that could have been the end of it, because I really had no further interest in the matter, except to keep them off my back. I had by then a Diploma and approval to work as a counsellor.

By Christmas of 2007, I felt ready to start working in that field. I realized that my having been struck off as a solicitor, whilst the circumstances had been fully explained and understood by those who trained and counselled me, might be something of a major problem in the public arena. I decided that unless I was to simply accept this "non-

status" as a person that the Board had inflicted upon me, and merely creep into a hole, too ashamed to show my face, then I had no option but to simply get out there and live — and to deal with such issues as might come up as and when they did.

CHAPTER TWENTY-THREE

Just after Christmas of the year 2007, I met by chance with Paul, the son of Alfred. After looking at each other for some time unsure of what to do, we finally got talking.

The family he said was not at all happy about the situation. They wished that they had not started the court proceedings or got listening to Kenneth at all.

It had cost his father a lot of money and indeed, even he had been called upon to contribute to the funding because Kenneth had demanded it.

I told him that although there was no way of getting it known, because of the way that the complaints process was manipulated, I did consider that his father had in fact been completely sold down the river by these legal "professionals" that he had trusted. Since mid 2000, they had simply meddled around in his legal matters, taken his money, and effectively, done nothing for him whatsoever. When called upon to account, they merely ducked for cover in the context of bringing as against me complaints about my inappropriate "interference".

These lawyers had used me somewhat as a scapegoat and lined their own pockets at Alfred's expense. I asked Paul what he thought the

family would do — but being the Murphy's I needn't have asked — as far as he knew, he said, they didn't intend to be doing anything about it at all.

I could not appeal the Committee findings — because no adverse determination had been made and considered there to be no real prospect of getting the strike off set aside.

I could have spent a lot of time and money in the process, only to end up back in the Supreme Court for re-hearing — for the original orders to be re-confirmed. Damned if you do — and damned if you don't.

So, I had decided in early 2008, to be realistic and to get started with my counselling business when I received a letter from the Board solicitors.

They had been instructed to chase me up for the legal costs of the contempt proceedings and the compensation orders made in the Supreme Court in the September of 2006. Given that I had not heard from anyone for some time concerning the legal costs of the SAT proceedings or the Supreme Court proceedings I enquired as to whether they were instructed as to all outstanding costs issues at that time.

No, they were only going for their own costs of the contempt

applications and the Board wanted immediate payment on the Supreme Court orders by which the new solicitor and Alfred had been awarded their "compensation" in a sum of around \$3,000.

I pointed out that to my knowledge, no order in the Supreme Court action finalizing the September decision ever been extracted, and that it was improper in any event for them to enforce interim costs against me in their long serving "contempt" application until it had been concluded.

I asked them whether or not they considered the "contempt" application — then simply adjourned "sine die" to have finally run its course.

The solicitor for the Board said that in his opinion it was concluded and that I should now pay all outstanding costs. As some had been "reserved" I suggested that they might need to re-list the matter so that the issue of reserved costs could be dealt with and the matter formally discontinued.

I had previously joked with another solicitor about the way these lawyers shrieked and recoiled at any mention of the "rules" — acting somewhat like a pack of demons splashed with holy water. But they always re-grouped, and came back.

Having obtained some further instructions, the solicitor duly

responded. No, they didn't need to have a re-listing — they just wanted me to pay on the orders already made.

At the same time, the practice supervisor was aggressively trying to get me to sign some documentation so as to finalize his further involvement in one of the estate matters. I had already written to him several times, even before this documentation was produced, stating my position. I said that I realized that the Committee as instructed by the Law Complaints Officer appeared to have approved his conduct — but that didn't mean I had to go along with it, and simply sign. Just for a joke, I suggested that he make use, once again, of the much abused "contempt" application to achieve his purpose. "Go on," I said, " you only have to make yet another affidavit to show how I have been obstructing and impeding you in matters relating to the closure of my legal practice. He said that he didn't think that they would be using that particular process any more — but didn't rule out the possibility of starting a new one. I told him that if I had intended to shop my clients so easily, I would have done so long before, and maintained my refusal to sign these unlawfully offered documents. He was not happy.

I asked the solicitors for the Board if they represented the Board in the matter of the estates.

Yes, they acted for the Board, and again demanded of me that I

pay to them all the legal costs demanded to date, and the compensation.

They were, it seemed, quite determined that I should pay them some money now whilst leaving the entire position as regards further payments somewhat open-ended and entirely within their control. Would I please pay up now and stop wasting their valuable time.

Believe me, if I could then have negotiated a final cash settlement with them in order to bring it to an end — I wanted to and would have done, but a final and freeing "settlement", such as had been negotiated as between Alfred and Mick back in February 2001, was not the real agenda — of Kenneth and the other solicitor nor indeed the Board.

Even if I paid them what they wanted now, I could just see it going on forever. There would be possibly more costs to cover the supervisor, more costs to cover the supervisors intermeddling in the estates, potentially an infinite amount in excess of the \$15,500 awarded against me by the SAT in favour of the Law Complaints Officer arising out of the proceedings that she had conducted against me in mid 2006. Earlier letters had clearly stated that unless I paid the ordered \$15,500 forthwith, and a few other random fees and costs which together added up to around \$31,000 then the Law Complaints Officer would proceed

to itemize and charge to me all of her barristers fees, whatever they might have been, and for all of the legal work conducted by law officers who worked for her and for her department, and those who had attended with counsel at the SAT proceeding.

I spoke then to an officer of the Committee and said that I would pay it, if it would be an end to the matter of all further process and complaints. But she was unable to negotiate on the point — the Board does not do "deals" she said — we have our orders. I said to her that no doubt she did and that being the case I would not be further wasting my time.

Funnily enough, when I first got such a written demand from the Law Complaints Officer back in 2006, that I pay the ordered amount of the SAT proceedings, conducted by the Committee, I requested from the Practitioners Complaints Committee a tax invoice. I duly received one — from the Board. The document was referenced to an internal reference number connected with the Complaints Committee but there was no invoice number as between the Board and myself, in relation to the debt.

It had been then that I had realized that in terms of the Act — when legal fees are allowed to the Committee for its performances before the SAT — they are in reality appearing directly on behalf of the

Board, and any fees thus "collected" are in fact in law — direct revenues to the Board. The Board was then maintaining a public stance of being wholly independent of the Committee and the Committee, driven by the intrepid Law Complaints Officer at that time, beavered away, with great enthusiasm, and in the public interest at around several hundred new complaints a year — most of which the Committee did not deal with, in preference to sending them off unread and unseen to the SAT for hearing.

No matter how trivial, no matter how wrong — just about every complaint that the Law Complaint Officer could whoop up — got sent off to the SAT.

I still wonder how many small practitioners like me have been faced with the prospect of a small cost and copping a plea — rather than expending thousands of dollars and wasting their time in trying to defend against an inevitable finding by the SAT.

I am sure that there were many. One in particular, published on the net, struck me as odd. When you call up the site — the transcript of the finding, starts right in the middle of the reasons, and proceeds thereafter to be completely slamming and damning of the practitioner concerned. Curious, I went back to the earlier part of the record that perhaps not many people would be bothered to do. If you read the first

part — it becomes fairly obvious that how the story was and how it had been represented to the SAT by the Law Complaints Officer were two entirely different and completely irreconcilable positions.

No wonder there have been reports of other solicitors having become extremely cross with the Law Complaints Officer for doing this naughty sort of thing, in the context of her conducted complaint proceedings before the SAT, and in the process, causing them unwarranted professional humiliation and a lot of money.

The Board was evidently not happy to have been involved over the past two years to shore up the position of the Law Complaints Officer since her conduct of the SAT proceeding as against me, without receiving any payment for it.

Apparently, no-one who assisted with this work had yet been paid — not even counsel who appeared before the SAT. But then he later became a Judge — so perhaps he didn't really mind.

I realized by this stage that the basic reason for their "lenience" with me to date with regard to these matters of costs was not based so much upon concern for my welfare but because they did realize at some level that they could get into trouble if they enforced costs orders arising out of a demonstrable "set up" of an action.

Although I had earlier delivered to them the practice computer

with the balance remaining files, it was not long afterwards that I demanded it back, and in fairness to the Board — it was re-delivered back to me the next day. It gave me at the time some reassurance that they knew themselves to be in a somewhat ambiguous position in having seized my practice on the basis of applications known by all concerned to have totally improper.

As a result, I thought that the Board, as a public body would not in fact proceed against me for its costs as Alfred's solicitor in the earlier litigation had done.

However, it would appear that I had underestimated the resourcefulness of these solicitors for the Board.

I was served with an application by the Board for leave of the Court, to enforce the compensatory orders made by the Supreme Court in September 2006.

If the Board had, in the first place, been the Applicant in the proceeding, then there would have been basis for them to be now making this somewhat duplicitous application — in which, of course, they were again seeking their costs against me.

It was an intricate application — headed up in the "contempt" proceedings and seeking leave to enforce that paragraph of the pronounced judgment of September 2006, in the Supreme Court by

which Alfred and the solicitors had been awarded their "compensation" — an action with an entirely different file number and a different applicant.

Given that it is usual to refer to a judgment by means of reference to the extracted order -this tortuous manner of expression was no goof up by a junior clerk. In fact, the orders made in the September of 2006, by way of extra precaution and protection – were not then properly extracted — nor reduced to final form.

CHAPTER TWENTY-FOUR

Like many things which the Board, its agents and employees did — which were somewhat risky propositions — the act of coercion, such as the "making " of the Supreme Court order of September 2006 — both striking me from the profession, and making the entirely inadequate and improper "compensatory" orders was always nearly done -but never quite completed — or else presented in an ambiguous manner — leaving one in no real doubt as to their intention — but always leaving an "out" for them on the basis of "misunderstanding" or their somewhat contrived "confusions".

Very effective as a means of goading, harassing and bullying : - pushing the other party towards a "position" — towards a compliant "finishing off" for them of every act.

Very similar in fact to the tactics of those who prey upon others, perceived as being weaker — in order to satisfy personal needs and desires which can at best be described as being somewhat bestial — who when caught out in the act are only too pleased to explain how they did nothing wrong — look here — we have the proof — this "victim" has consented.

And so I had by now learned not to do, where these people were concerned, what a normal and reasonable person would do — because

in so doing, the display of a willingness to be fair and open to reason was only seen by them as potential exploitable weakness — give them a chance and they would be in like Flynn — gouging and tearing their way further into what really was quite intentional destruction.

This tyrannical fury of people impotent in power except by use of unfair and improper means is really a narcissistic defence against a perception of their own failure and shame — what these people did to both me and to my clients was without doubt unlawful in its practice and intent — and the "bad" that they did — that they were unable to see was furiously, continuously and relentlessly — simply projected out — against me.

It was in fact only when I had completed fairly advanced studies of the narcissistic personality disorder with its primitive defences of splitting objects and people into "all good" or "all bad" — with the bad being anything that tends to arouse feelings of guilt, shame or anxiety in the narcissist that I began to understand. These people and the things that they did — were not primarily directed at causing me discomfort and intense frustration and pain — that was just my subjective reaction to it.

They sent out letters late on Friday afternoons not to spoil my weekend as I originally thought. It was simply a ruse on their part to

continue to maintain power and control — over that gap and space in time when they would not actually be in the office. I became, instead of merely "shell- shocked" in fact quite immune to it — in fact it completely split my personality. For them I had to be as hard and rigid as they were in order to survive — and devote much intellectual thought towards ways and means of simply fending off this most unlawful process.

In fact, if I had not had a strong sense of self-identity and purpose — long before now they would have ripped me apart — financially, socially, physically and mentally.

Once I considered that I had fended them off — for a while, I could then simply revert to doing what I preferred to do and going about my newly organised life with purpose — until the next time they hit. Then, I would have no option but to devote my time and energy towards processing and reprocessing their demands — until I could see what was lawful and what was cunning — and protect myself accordingly. It is the stuff of psychosis but I never went down there with them. This was mainly due to the fact that I had a good therapist who never once made a mistake when I latched onto him for support and I had a demanding job that forced me to go out into the world for at least part of every day and leave behind all their mad confusion shut off in the little black hole that my spare room had become. I kept their madness out

there in the paperwork — processed it, catalogued it and sent my answers back to them as statements of the law — not that they could "see" it, but it kept them at a distance — it kept them outside of my head.

In fact, by this stage I often asked people what they thought I should do, just to be certain of what it was that would be expected of me by these people — and then I would quite determinedly proceed to do the opposite — it never stopped them entirely but without my compliant "assistance" — it did seem to slow them down. It was quite obvious that if the Board had conducted itself properly in the first place, and made the application of September 2006 in its own name instead of using the name of its division, the Practitioners Complaints Committee, as a cut off or as its "scapegoat", this application that the Board now had to make for "leave" to enforce the orders obtained by the Committee would have been unnecessary. I had raised this objection quite clearly at the hearing. It had been contemptuously overruled.

And now — this application for leave had been listed, it had been served and so it had to be dealt with by the Court — and why indeed would this Court object — when it had already made the order.

The application came before the Court, listed before a Master, and was adjourned generally to be heard before a Judge. I telephoned

the Court a few days later to find out the next hearing date. As I had not attended, I was told that no substantive orders were made by the Master — and that the two applications were to go before the Chief Justice on a certain date for determination. I noted the date and then telephoned the Board solicitor regarding this other mentioned application.

"Who told you about the other application" he demanded — "how did you find out". I said that listings had told me about it. I suggested that if there was another application proceeding along tagged onto the other one — then perhaps he might care to serve it upon me as well. He then said that on reflection, he didn't actually know that there was another application on foot but that he would get some instructions and find out.

I was then served with a letter from the solicitors for the Board, advising me that the Chief Justice had at the previous hearing in fact made the orders that the Board required, adjourning further in the matter of costs, and would I now make out a check for the amount of the compensatory orders. I decided that it was about time the Board got at least a reality check in relation to this continuously conducted "process".

The Board and the Court were adamant that it had been the

Chief Justice himself who had attended at the first return date. I tried to contact either the Master or counsel who had attended — but they were unfortunately both then on leave — and the matter was moving on.

So, I wrote to the Court and the Board solicitors, stating that their application headed up in the "contempt" proceedings was wrong — they could not run along undercover of that — they would need to bring a proper application headed up and unambiguously being the same action as the striking out process. For good measure I sent copies of the correspondence to the Chief Justice. I also pointed out that whether or not it was a Master or the Chief Justice who had attended on the first return — noting that according to listings the official record of it having been a Master did not then appear to have changed, the confusion would not help. The Master, if he had heard it, did not have the power to make the requested orders anyway — any final judgment that eventually came out — would only be valid by authority of the involvement of the Chief Justice in the making of any orders.

Although I chose again not to go to one of these most unusually listed hearings, evidently my message had got through to the Chief Justice. Orders were now made that the Committee had to make an application regards the leave to enforce compensation, and the "contempt" application of the Board, now devoid of current content by

way of application was not, as it should have been, struck from further listing — it just got adjourned, along with the order that the Committee do file a proper application to another date for a hearing. Again this was to be before the Chief Justice.

Well, I knew from past experience in dealing with the Law Complaints Officer that she would not come anywhere near the Court and make an affidavit to support the an application for leave to enforce those compensatory orders — so I waited to see what would happen.

The new application was served, and for good measure, two copies of it were sent to me by fax — over 30 pages all over the floor and stacks more in memory. It looked like a draft as most of the pages had lines across them — but that might have been a default with my fax.

The Board was still the Applicant but they had re-typed the heading as per the ordered application so that the Committee was noted as applicant in the heading with the appropriate heading. They were still seeking the same orders for leave enforce the compensatory orders but it seemed now that it was in fact the solicitors who were making the application and nowhere did they state quite clearly whether they acted for the Board or for the Committee.

Before this debacle arose — I had in fact asked the solicitors if

they would make legal history in this matter, where the interests of my former client Alfred were concerned by actually stating, just for the record, clearly and unequivocally from whom they took instructions. Boldly, they had responded — Ms Walton — we act for the Board.

So, I wrote to the Chief Justice, saying that the effect of the judgement handed down in September 2006, regards the compensatory orders, was to make the Board a Trustee as regards its handling of the money -that part of their duty was therefore to enquire as to its circumstances and to ensure that what they were involving themselves in did not have any taint of illegality. I also told him that the record did not appear to be in order as it was clearly the Committee who should have been making the application — pursuant to his order.

The matter proceeded to a hearing and of course — from this maze of ambiguity — the required orders got pronounced.

I demanded some reasons for the judgements made in the matter and was simply told that none had been written. I responded with a request that the Chief Justice then bestir himself and get down to writing some out.

In response to my complaint about the conduct of the action, I received a note from the clerk — as far as could be seen, nothing was out of order but I was welcome to come in and look at the Court file if

indeed it was causing me such concern. So I did.

Sure enough, the judgment relied upon was still on the file as first produced in incomplete form — and I found the associates note — recording that counsel had attended, on behalf of the Committee, when the orders were made that it file the application. Next to this was another file note — by which this earlier note had been corrected — no, the Committee had not in fact attended -it had always been only the Board. Needless to say the second note, correcting the first certificate had not been signed by anyone.

So, I wrote to the solicitors stating that I required from the Court a filed sealed copy of the September 2006 judgment, signed by the Registrar. Well, of course it did not exist. What the Committee had done when filing it, was to make a few errors in the typing, but these were corrected with small seals, and someone had merely used a stamp to affix the Registrar's name — there was no large Court seal (although it was overburdened with seals), no signature and even the date of filing varied as between the typing and the Court stamp by several days - when it is supposed to be done on the same day.

Unfazed, they created a new character, in this legal fiction — The Court Records Co-ordination Officer. One did not of course know who this was who now proudly affixed his stamp to the document stated

above, but in answer to my request — yet another copy of the same document was sent out to me -solemnly bearing the words : " I certify this to be a true copy of the document which it purports to be a copy of "- stamped and dated. I have no doubt that it was.

Long after the hearing had been finalized, I suddenly received, by post a complete reasons for judgment in the matter — the delay had apparently been solely caused because I had not appeared at the hearing. Evidently, they wished to cover the trust issues that I had raised concerning the Board — but these were of course most easily disposed of — the Judge didn't understand precisely what I was saying or getting at here — so he had ruled against me and determined that no issue relating to the Board as Trustee could apply or in fact arose.

So, by means of using the both applications, the Board had more or less got the cover in further proceeding that it required from the Court and the next event was the issuing of bills of costs relating to the orders.

There were basically 3 in the end — they suddenly made up one for the SAT proceeding, by which leave had been given to the Board to appoint a supervisor to my office to manage the trust account just after the June 2006 SAT hearings against me. I had to ask for a copy of the relevant SAT order as one had never been previously served upon me

— and sure enough, although none had been applied for or granted according to the transcript — costs orders against me now appeared in this newly served document.

I lodged written objections to each of the intended assessments on the basis that the Law Complaints Officer and her conduct were still under review — that the Court should stay the assessments. But they didn't want to know. And as for the bills of costs themselves — there was work done in relation to one action included with another, overlaps and gaps and some entirely gratuitous file notes accidentally left over from the drafts. The cost scales used were incorrect and the allowable costs thereby in need of adjustment, but all in all there were a lot charges — and I was still receiving new documentation and amendments by fax from the Board's solicitors until the moment I was leaving for the city. I suppose that was a precaution on their part so as to keep their options open for an adjournment if I didn't turn up at the hearing — that this did not provide me any time to read or to consider them was not at all an issue — the Taxing Officer made it quite clear, from the very outset, that he was there to do the assessment and that anything I said or did was just obstructive to him dealing more quickly with the proceeding. He dismissed my objections to the assessment proceeding at all on the grounds that the legality or otherwise of the

proceedings was not at all his concern.

Then he turned beamingly towards the young solicitor who was attending upon the assessment on behalf of the Board. She basically just sat there, for the purpose, blushing and flushing as the kindly and more experienced court officer conducting the assessment gently and most courteously informed her of the many errors contained in the bills — offering to work through the entire list of items with her, between them they eventually re-wrote the entire bills — so that you could not say that anyone but the Court had really created the actual bills that were eventually relied upon and assessed. It seemed to me to have put this junior solicitor somewhat on the spot professionally. She made it perfectly clear that it was not she who had created these documents — and wanted nothing to do with the recently served amendments — which proved upon enquiry by the officer to be of very little substance in fact. So, I was to be happy by reason of her not proceeding with them — her now taking this position was in fact saving me money!

But not to worry — the child didn't seem to be too upset by the experience — and I noted the presence of a more senior female solicitor sitting at the back of the Court — who presumably would be escorting her back to the office. I left the taxation early — my parking meter was due to expire — and I needed a breath of fresh air.

I also decided to attend at the SAT assessment and encountered similar difficulties in raising the issue of as yet un-disposed of complaint matters relating to the costs. The costs hearing proceeded and costs were duly assessed.

I did later receive copies of transcripts in respect of each assessment — interesting reading. I decided to write to the Board.

"Your employee, the Law Complaints Officer is a certificated legal practitioner and I wish to make a complaint against her concerning her conduct of certain complaints", I notified them. "Obviously, there could be a conflict of interest here — what are your protocols and procedures when a complaint is made as against the Law Complaints Officer by a person adversely affected by her conduct".

I never got a reply, so I kept writing requesting statements of progress as regards my complaint to the Law Complaints Officer herself. With still no response after several months and a total failure on the part of the Law Complaints Officer to return any of my calls, I was finally lucky enough to be able to speak to a receptionist about it — "oh yes", she said, "you don't need to worry — your complaint is in the system — it's not yet been given a number — but it's been allocated to the care and conduct of Ms ---she paused --- it was the same law officer who had prepared the earlier complaint matters against me for the

LPCC.

I complained bitterly to the Board that they had no business to be instructing solicitors and other agents to be acting on their behalf, against me, when they clearly didn't want to exert a similar amount of pressure upon their employee, The Law Complaints Officer to do what she had to do by way of finalizing the matter too.

The Board totally ignored my correspondence and letters from the Board's solicitors implying that they continued to act on instructions from the Board kept being delivered to me, and eventually a letter from the Sheriff to confirm that warrants had in fact now been placed upon my land. I decided to pay the compensation order — I thought that perhaps when Kenneth received the miserly sum, something might stir in him to do something about it, but very likely, like the content of the practice trust account, I would imagine that to date that money has never been sent out. As to the rest of the warrants which I assume to be on my land, that is where they are, and that is the way it is.

I even wrote a letter to the PID officer, listed on the web, for the Board, but although my letter was delivered, it hadn't reached desk of the PID officer until the next day and by then she had gone on leave. After some discussion with a variety of officers from the Board, I was eventually, begrudgingly told — she isn't the PID officer any more any

way — you need to speak to the Chief Executive Officer — who now conducts that role — but unfortunately — he is away. Not only today but at least until the middle of next week.

No sooner had these resultant "costs" warrants been placed upon my land, I got yet another letter from the practice supervisor. He was sending me he said, all of the content of the two estate matters — he had decided that in fact the conduct of these estates did not fall within his authority or power as a supervisor of my practice after all, and so, here they were.

And no sooner had I got that letter, than there was another letter from a yet another firm of solicitors. As I was now back doing the estate — would I please now sign some different forms. One of the beneficiaries was now deceased, so my former claims that the earlier agreement offered might adversely affect their position no longer applied — which argument I thought probably had some merit — and so, now would I please sign up the forms.

I said that I might, dependent upon a confirmation from the Board that if I did that they would not raise any future issue about it, and subject to these solicitors making to me, as executor of the estate, a claims notification regarding the earlier conduct of the practice supervisor and the costs incurred, to those beneficiaries of getting

involved in it — so that I could make a claim against him as a creditor of the estate. To date I have had no further response from any of them, and last I heard the practice supervisor had with the receipt of my last letter — decided to go on leave for a month.

The warrants still sit on my land. The Board has not been in a hurry to sell. The warrants will have to be renewed soon — or else they will expire.

I am wondering who will be the brave one to make out the affidavit, that must be filed in support of the necessary renewal application for the warrants — and I wonder what form it will take!

CHAPTER TWENTY-FIVE

During this period I did write to several government agencies, all of whom were unable for one reason or for another to be of any help or assistance. Even the Law Society and certainly the women's society within the profession have found themselves unable to do much except to provide concise and cogent reasons why they cannot become involved.

Engaging in correspondence with the then Attorney General, over a period of time, I discovered that there have crept into the legislation over the years a variety of laws by which tried and tested principles of law have become gradually eroded.

There used to be what were called prerogative writs by which oppression by State and speedy justice could be applied for and obtained within the Courts mandamus, certiorari and the famous habeas corpus.

These were all abolished with the introduction of the SAT — which was itself supposed to be an independent counter balance to the Courts. But they filled it up with ex members of the Legal Profession — still in their old boy schools and regiments — and allowed the Legal Profession to self-regulate itself into a cartel as between the SAT and

the Courts of Law and the Legal Practice Board.

Many may think that they only do damage to themselves and to their own — but the reality is that if any solicitor is denied justice as a result of having for reasons other than misconduct managed to fall foul of the powers that be within the profession — then the entire structure suffers and any expectation of receiving unbiased hearing through the Courts proves to be entirely illusory.

Solicitors are made to toe the line and the pressure to conformity can be intense — one does not wish to lose one's status and professional capacity simply by reason of having a difference of professional opinion as to what in law is right. The complaints process can be used both obstructively and offensively — and there is effectively no way around it.

That the SAT, in its decision, expressly stated that it made no finding of dishonesty against me does not, one finds, exactly help in the entire context of the matter. I don't know that any solicitor previous to me has ever been struck from the roll, in disgrace, other than in a matter concerning professional dishonesty.

Perhaps this finding makes me unique — a solicitor struck off for her honesty.

It bears interpretation.

When I asked for the intervention of the Attorney General — he declined on the basis that such an intervention by him would offend against the doctrine of the "separation" of powers -judicial, administrative and political which really begs the question when the request is made that he actually intervene — so as to separate them. He even declined to allow me to issue a relator action so as to re-tell the story, in a relator application, for further hearing before the Supreme Court — for which his consent was required — and his rejection final.

I had, he said, not provided him with enough information, or in the proper form, so as to enable him to make a decision in the matter — so and upon that basis — he was rejecting my request!

In my researches over the years, into some dark and broody areas of the law, of undue influence, fiduciary relationship and unconscionable conduct and into totalitarian regimes — I discovered one day the origins of our status as proctors when admitted to practice as officers of the Court.

The function of proctors was, in England abolished years ago. Originally a somewhat private police force, loosely attached to the profession, employed mainly as head prefects to undergrad frolics, one particular group did, I understand, take their duties more seriously — to the extent of rounding up citizens who in their opinion were being a

public nuisance — using their powers of citizen's arrest to cause all manner of mayhem and distress — even incarcerating those whom they considered to be "fallen women" into what was called the "Spinning Room".

People had to spend a lot of time and money obtaining writs of habeas corpus from the Courts to get people out of their clutches, who should not by rights have been put there in the first place.- leading, in England, to a timely and due abolishment of both the office and its misconduct.

I rather suspect that we have, washed up on our shores, in Perth, the very relic of this former institution — residing in Colonial House — on St Georges Terrace.

I have no doubt that others can see it, but how, and where can anybody say it?
