

# SOCIETY APPLIES FOR STRIKE OFF

The Law Society has filed an originating motion in the Supreme Court to strike off William Robert Somerville from the roll of the Supreme Court of the Northern Territory.

The application comes after Somerville pleaded guilty to nine counts of stealing and 12 counts of fraudulent conversion as a trustee. The total sum involved in these offences was \$26,584.36.

On June 1 this year Justice Bailey sentenced Somerville to imprisonment for three years, ordering that the sentence be suspended after serving a period of 12 months. The sentence was back-dated to 7 March 2001 to take account of time served in custody.

In sentencing Somerville Justice Bailey said that Somerville's position as a legal practitioner was deserving of particular attention in the context of breach of trust cases.

"In the prisoner's case he committed serious and flagrant breaches of trust against his clients over a period of some five months," Justice Bailey said.

"The amount of money involved was certainly not large in comparison to many cases of a similar kind which have occurred elsewhere in Australia. On the other hand, nearly \$27,000 is not to be regarded as insubstantial."

"However the gross breach of trust committed and the inevitable undermining of public confidence in the integrity of the legal profession generally, are factors which weigh heavily against the prisoner at arriving at an appropriate sentence," he said.

The nine stealing charges arose after Mr Somerville received funds from clients in the form of cash, money orders or cheques in compliance with the Legal Practitioners Act but did not deposit them into his trust account. The cash and money orders were used directly for Mr Somerville's own purposes while the cheques were paid into his office account and subsequently used for personal purposes.

In relation to the 12 offences of fraudulent conversion of trust monies, Mr Somerville drew cheques on his firm's trust account and either took the proceeds in cash or used the proceeds to meet personal or business expenses. In each case Mr Somerville had no authority from clients to withdraw funds from his trust account or use the proceeds for his own purposes.

The Legal Practitioners Fidelity Fund requested restitution in the sum of \$25,860.21 paid to prisoner's clients who made a claim against the fund for their losses. In addition victim impact reports were presented on behalf of a victim claiming compensation for money stolen and fraudulently converted.

Justice Bailey made no orders in relation to the Fidelity Fund but ordered restitution be made to one victim to the sum of \$2096.

Somerville first notified the Master and the Law Society of deficiencies in relation to his trust account at the end of May 1997. After receipt of the examiners report the Law Society cancelled Somerville's unrestricted practising certificate on 4 June 1997.

Following the receipt of the receiver's final report the Law Society referred the matter of defalcation of trust monies to the police in September 1997.

Mr Somerville was first admitted as a barrister in Queensland in 1980 and moved to the Territory a few years later where he established his own practice in Katherine. From May 1988 to September 1989 he worked as a sole practitioner at his firm. As a result of reported deficiencies in his trust account the Law Society Northern Territory cancelled Mr Somerville's unrestricted practising certificate. The Supreme Court ordered the practising certificate be reinstated after seven days on the condition that Somerville's trust account be kept by an independent accountant.

Mr Somerville took up employment with the North Australian Aboriginal

Legal Aid Service and a year later became principal solicitor. Mr Somerville continued his work at NAALAS until October 1994 when he was charged with obtaining credit contrary to the Bankruptcy Act and sentenced to 9 months imprisonment. The sentence was fully suspended on a two-year good behaviour bond. As a result of the conviction the Law Society suspended Mr Somerville's practising certificate for three months.

Upon release from prison Mr Somerville went into partnership and established his own private practice at Coolalinga where he committed his most recent offences.

Mr Somerville has consented to the strike off motion.

In sentencing Mr Somerville Justice Bailey cited Tadgell J comments on community expectations about the sentencing of legal practitioners:

The community, of course, expects, as it is entitled to expect, that persons whom this court have admitted to practice as barristers and solicitors, are persons in whom this community can place a very high degree of trust. This court must therefore be and be seen to be fastidious in the steps it takes with a view to ensuring maintenance of the highest standards by members of the profession. In dealing with a solicitor who has acted falsely to his oath and betrayed his trust in his capacity of a solicitor, the court is therefore faced with a double duty. It is required, not only to uphold the criminal law, but is required to do what it can to maintain the honor of the legal profession. This is a task of impressive difficulty when the solicitor's conduct has not only made an irredeemable dent in his own reputation, but has necessarily imperiled the integrity of his chosen profession. An associated difficulty that besets the court is that it must be seen to deal with a member of its own profession no more leniently than with a comparably dishonest layman. True comparison, of course, between a deceitful lawyer and a deceitful layman is not easy to make, because the layman would, ordinarily, not have made his oath to demean himself honorably.